163 U.S. 704

RECORD, CASE No. 15,157.

163-704

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., ~~1187~~. 42 Fed 456 168

GEORGE E. SHUTE, SHERIFF, AND ADOLF LADENBURG, ERNST THALMANN, AND ABRAHAM LIMBURGER, CO-PARTNERS UNDER THE FIRM NAME OF LADENBURG, THALMANN & CO., APPELLANTS,

vs.

WILLIAM KEYSER.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

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OCTOBER TERM, 1892.

TERM No., 1187.

GEORGE E. SHUTE, SHERIFF, AND ADOLF LADENBURG ERNST THALMANN, AND ABRAHAM LIMBURGER, CO-PARTNERS UNDER THE FIRM NAME OF LADENBURG, THALMANN & CO., APPELLANTS,

vs.

WILLIAM KEYSER.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

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1 *Judgment-Roll.*

In the District Court of the Second Judicial District of the Territory of Arizona in and for the County of Gila.

WILLIAM KEYSER (a Resident of the City of Baltimore and State of Maryland), Plaintiff,

vs.

GEORGE E. SHUTE (a Resident and Sheriff of Gila County, Territory of Arizona) and Adolph Ladenburg, Ernst Thalmann, and Abraham Leinburger (as Copartners under the Firm Name of Ladenburg, Thalmann & Co.), and All Citizens of the City of New York, in the County of New York, Defendants.

The plaintiff complains and alleges:

First.

That defendant George E. Shute is the sheriff of Gila county, Territory of Arizona.

Second.

That defendants Adolph Ladenburg, Ernts Thalmann, and Abraham Leinburger are copartners doing business in the city of New York, State of New York.

Third.

That the Old Dominion Copper Mining Company is a corporation duly organized under the laws of the State of New York, and has heretofore been carrying on and transacting business in the Territory of Arizona.

2 Fourth.

That on and prior to the 23d day of February, 1884, the said Old Dominion Copper Mining Company was the owner of and in possession of the following-described real estate, situated in Gila county, Territory of Arizona, to wit: That certain mine or mining claim known and designated as the Globe mine, situated, lying, and being about one mile north of the town of Globe, Gila county, Territory of Arizona, and recorded in Book 4, pages 162, '3, Globe district and Globe county mining records; also that certain mine or mining claim known and designated as the Globe ledge, adjoining and being an extension of the above described Globe mine, and is recorded in Book Four (4), on pages 163, '4, '5, Globe district and Gila county mining records; also that certain mill site known and designated as the Red Jacket mill site, and being the same upon which the Old Dominion Copper Company smelter stands, together with the machinery and appurtenances thereon and thereunto belonging. Said mill site is situated, lying, and being on the east bank of

Pinal creek, about a quarter of a mile northerly from the northerly line of Globe, Gila county, Territory of Arizona, and is recorded in Book 1, on page 157, Gila county mining records.

Fifth.

That on the 23d day of February, 1884, a judgment was duly entered in the district court of the second judicial district of the Territory of Arizona in and for the county of Gila against the Old Dominion Copper Mining Company and in favor of George Pope, George B. Cole, John W. Garrett, William Keyser, George W. Wood, and John S. Gilman, of the firm of Pope, Cole & Co., for the sum of $277,378.27 and interest from January 31, 1884, and $10 cost.

The said judgment was by confession, and the verified statement in writing made by the said Old Dominion Copper Mining Company authorizing the entry of said judgment was duly filed with the clerk of this court on the 23d day of February, 1884, and
3 said clerk thereupon endorsed upon it and entered, at 5 o'clock p. m. of the same day, in the judgment book, a judgment for the sum of $277,378.27, with interest from January 31, 1884, the amount confessed, and $10 cost, and immediately thereafter said judgment was duly docketed by said clerk; that on the 26th day of January, 1886, an execution issued on said judgment and was placed in the hands of the sheriff of Gila county, Territory of Arizona, commanding him to cause to be made the moneys in said writ specified off of the land, tenements, and real property (if sufficient personal property of said debtor could not be found) belonging to said judgment debtor, The Old Dominion Copper Mining Company, on the 23d day of February, 1884, or at any time thereafter, and, there not being sufficient personal property of said debtor, the said execution was by the said sheriff duly levied on all the right, title, and interest of the said judgment debtor in and to the said three pieces of real estate above described (together with other real estate of said debtor) as the property of said judgment debtor, and the same was duly sold, under and by virtue of said execution and levy, by said sheriff (together with other real estate of said debtor) to plaintiff, on the 20th day of February, 1886, for the sum of $130,000, lawful money of the United States, and certificate of sale was duly issued to plaintiff therefor, and after the time of redemption had expired, to wit, on the 21st of August, 1886, a deed was duly executed by said sheriff to plaintiff; that in said levy, certificate of sale, and deed the first piece of property above described is described as follows, to wit:

"The Globe mine, patented by the United States Government to Benjamin W. Reagon on the 18th day of October, 1881, by patent recorded in the office of the recorder of Pinal county, Territory of Arizona, on the 19th day of November, 1881, to which record reference is made for a fuller description of said mine."

4 The third piece of property above described is described in said levy, certificate of sale, and deed as follows, to wit:

"The Copper Jack mill site, of which the location notice is re-

corded in the office of the recorder of Gila county, in Book 2 of Records of Mines, at page 311, and to which record reference is hereby made for a fuller description of said mill site, and upon which the smelting works of the Old Dominion Copper Mining Company are situated."

That by virtue of such levy and sale and deed plaintiff became vested with all the right, title, and interest in said three pieces of real estate that was vested in the Old Dominion Copper Mining Company on the 23d day of February, 1884, or at any time thereafter, and on the 21st day of August, 1886, entered into the possession of said three pieces of real estate, and has been in possession ever since, and is now in possession thereof, owning and claiming title thereto in fee simple by virtue of and under said levy, sale, and deed.

Sixth.

That on the 30th of November, 1887, three judgments were rendered in the district court, first judicial district of the Territory of Arizona in and for the county of Cochise, in favor of defendants Adolph Ladenburg, Ernest Thalman, and Abraham Leinburger, as copartners under the firm name of Ladenburg, Thalman & Company, and against the Old Dominion Copper Mining Company—one for the sum of $7,500 principal and interest amounting to $1,893.75 and costs of suit, taken at $25.50; another for $7,500 principal and interest amounting to $—,893.75 and costs of suit, taken at $22, and the other for $3,990 principal and interest amounting to $1,007.47 and costs of suit, taken at $22; that executions issued on said judgments on the sixteenth day of January, 1888, and have been placed in the hands of defendant George E. Shute (the sheriff of Gila county, Territory of Arizona), and the said sheriff, not regarding the rights of this plaintiff in the premises and in disregard thereof, has levied said executions upon the said three pieces of real estate above described as the property of the said Old Dominion Copper Mining Company *Company*, and has advertised the same for sale on the 6th day of March, 1888, and will, on sa-d day, sell the same by virtue of said execution- unless restrained by the fiat of this honorable court, and plaintiff's title to said three pieces of real estate will thereby be clouded and involved and the value thereof be impaired and depreciated, to plaintiff's great and irreparable injury. Wherefore plaintiff prays:

1st. That a writ of injunction issue restraining defendants and each of them from selling said three pieces of real estate under said execution.

2nd. That upon final hearing said injunction be made perpetual.

3rd. And for such other and further relief as may seem meet and proper in the premises.

ANDERSON, FITZGERALD AND ANDERSON,
Attorneys for Plaintiff.

STATE OF CALIFORNIA, } ss:
County of Los Angeles, }

J. A. Anderson makes oath and says that he is one of the attorneys of the plaintiff in the foregoing complaint; that the plaintiff is absent in the State of Maryland, and that affiant, in plaintiff's behalf, makes this affidavit, and says that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge except matters thereof stated upon information and belief, and that as to those matters he believes it to be true.

J. A. ANDERSON.

Sworn to and subscribed before me this 25th day of February, 1888.

[NOTARY SEAL.] W. R. BURKE,
Notary Public in and for Los Angeles County, California.

6 (Endorsed.)

Upon giving bond in the sum of ten thousand dollars, to be approved by the clerk of the district court of Gila county, conditioned upon paying all damages to defendant by reason of the injunction and according to law (sec. 2131, Code), the said clerk will issue injunction according to the prayer of the complaint.

February 27th.

WM. H. BARNES,
Judge of District Court and Associate Justice of Arizona.

(Attached.)

Globe and San Carlos Telegraph Company.

Time rec'd, 8 p. m., 2nd.

Dated TUCSON, *March* 2, 1888.

To clerk district court, Globe:

In Keyser *vs.* Shute, etc., issue temporary injunction; five thousand dollars bonds.

BARNES, *Judge.*

(Endorsed:) Telegram received and filed March 3, 1888, 60 o'clock a. m. B. G. Fox, clerk.

7 C.

Summons.

In the District Court, Second Judicial District in and for the County of Gila, Territory of Arizona.

WILLIAM KEYSER (a Resident of the City of Baltimore, State of Maryland), Plaintiff,
vs.
GEORGE E. SHUTE (Sheriff and Resident of Gila County, Arizona Territory) and Adolph Ladenburg, Ernest Thalman, and Abraham Leinburger, Copartners under the Firm Name of Ladenburg, Thalman & Co. (and all Citizens of New York, State of New York), Defendants. } Summons.

Action brought in the district court, in the second judicial district, in and for the county of Gila, Territory of Arizona.

The Territory of Arizona sends greeting to Geo. E. Shute, sheriff of Gila county, and Adolph Ladenburg, Ernest Thalman, and Abraham Leinburger, copartners under the firm name of Ladenburg, Thalman & Co.:

You are hereby summoned and required to appear in an action brought against you by the above-named plaintiff in the district court of the second judicial district in and for the county of Gila, in the Territory of Arizona, and answer the complaint filed with the clerk of this court, at Globe, in said county, within ten days (exclusive of the day of service) after the service upon you of this summons, if served in this county; but if served out of the county
8 and within this district, then within twenty days; in all other cases, thirty days: and you are hereby notified that if you fail to appear and answer the complaint as above required judgment by default will be taken against you.

Given under my hand and the seal of said
District Court Seal. district court, at Globe, this 3d day of March, A. D. 1888.

B. G. FOX, *Clerk.*

(Endorsed:) Rec'd at 5 o'clock p. m., March 3d, 1888. Frank M. Hammon, constable. Served on Sheriff Geo. E. Shute at 5.30 o'clock, March 3d, 1888.

(Endorsed.)

OFFICE OF SHERIFF, *County of Gila,* } *ss:*

I hereby certify that I received the within summons on the 3d day of March, A. D. 1888, at 5 o'clock p. m., and personally served the same upon Geo. E. Shute, sheriff of Gila county, A. T., one of the within-named defendants, by delivering to and leaving with said

Geo. E. Shute, in the county of Gila, on the 3d day of March, 1888, attached to a copy of the complaint referred to in said summons; and I further certify that after due and diligent inquiry I have been unable to find Adolph Ladenburg, Ernest Thalman, or Abraham Leinburger in Gila county.

Globe, M'ch 26, 1888.

FRANK M. HAMMON,
Constable of Globe Precinct, Gila County, A. T.

9 (Endorsed:) No. 302. District court, second judicial district, county of Gila. Wm. Keyser, plaintiff, *vs.* Geo. E Shute *et al.*, defendants. Summons. Filed March 26, 1888. B. G. Fox, clerk.

10 D.

Answer.

In the District Court of the Second Judicial District of the Territory of Arizona in and for the County of Gila.

WILLIAM KEYSER, Plaintiff,
vs.
GEORGE E. SHUTE, Sheriff; ADOLPH LADENBURG, ERNEST THALMAN, and ABRAHAM LEINBURGER, Defendants.

Now come the defendants above named and, answering plaintiff's complaint on file in said action, say:

1st. That the said complaint does not state any matter of equitable jurisdiction entitling plaintiff to an injunction, and that the prayer of said complaint therefore should be denied and the said action dismissed.

2nd. Defendants, further answering, deny each and every allegation contained in the said complaint.

3d. And, for a further and separate answer to plaintiff's said complaint, defendants say that on the 23d day of February, 1884, mentioned and referred to in paragraph V of plaintiff's said complaint, and before the entry and docketing of the said judgment therein referred to, said defendants had commenced three several actions in the district court of the first judicial district of the Territory of Arizona in and for the county of Cochise, in favor of the said defendants Ladenburg, Thalman & Co. and against the Old Dominion Copper Mining Company, in which said suits *and* writs of attachment were severally issued and placed in the hands
11 of the then sheriff of said Gila county, who duly served the same by making a levy on all the property belonging to the said Old Dominion Copper Mining Company then within the said county of Gila, which said property belonging to the said Old Dominion Copper Mining Company then within the said county of Gila *which said property* was the same property described in plaintiff's said complaint; that said levy upon said property of the Old

Dominion Copper Mining Company was made by the said sheriff before the entry or docketing of the said judgment referred to in said complaint and was at the date, hour and time therein mentioned as the time of the entry and docketing of the said judgment a valid, subsisting, prior lien upon the said property described in the said complaint; that judgment- were afterwards obtained in the same suits in favor of the said Ladenburg, Thalman & Co. and against the Old Dominion Copper Mining Company, being the same judgments described in paragraph VI of plaintiff's complaint, upon which said judgments executions were duly issued and *and* placed in the hands of the said defendant, Geo. E. Shute, sheriff of said Gila county, for the enforcement of the said lien upon the said property created by the said writs of attachment theretofore issued and levied upon the said property in the said suits above referred to.

Wherefore defendants pray that plaintiff's prayer for an injunction be denied and that said action be dismissed and that defendants have judgment for their costs of suit.

GEO. G. BERRY,
Attorney for Defendants.

12 TERRITORY OF ARIZONA, } ss:
County of Cochise, }

George G. Berry, being first duly sworn, says upon oath that he is the attorney of defendants in this action; that he has heard read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes them to be true. Affiant makes this affidavit because the defendants *the defendants* are absent from the Territory and because he is acquainted with all the facts.

GEORGE G. BERRY.

Subscribed and sworn to before me this 2nd day of April, 1888.

W. D. SHEARER,
[NOTARY'S SEAL.] *Notary Public.*

(Endorsed:) No. 302. In the district court of the second judicial district of the Territory of Arizona in and for the county of Gila. William Keyser, plaintiff, *vs.* George E. Shute *et al.*, defendants. Answer. Filed April 5, 1888. B. G. Fox, clerk.

13 B.

Order Modifying Order for Injunction.

In the District Court, Second Judicial District of Arizona Territory in and for Gila County.

WM. KEYSES, Plaintiff,
vs.
GEORGE E. SHUTE, Sheriff (of Gila County), *et al.*, Defendants.

The order heretofore made by me in the above action directing the clerk of the above-entitled court to issue injunction as prayed for in the complaint herein upon the filing of a ten-thousand-dollar bond, conditioned as required by law, *it* is hereby modified and said clerk is directed to issue said injunction as prayed for upon plaintiff filing a bond in the sum of five thousand dollars, conditioned as required by law.

March 2, 1888.

W. H. BARNES,
Associate Justice and Judge First District.

(Endorsed:) No. 302. District court, Gila county, Arizona. William Keyser, plaintiff, *vs.* George E. Shute *et al.*, defendants. Order modifying order for injunction. Filed March 8, 1888. B. G. Fox, clerk.

14 E.

Order Overruling Demurrer and Motion and Order Granting Continuance.

WILLIAM KEYSER, Plaintiff,
vs.
GEO. E. SHUTE *et al.*, Defendants.

On theis 16th day of April, 1888, of the April term of the district court of the second judicial district of the Territory of Arizona in and for the county of Gila, this cause being regularly called for hearing and plaintiff and defendants represented by their respective counsel, the demurrer was argued and taken under advisement.

TUESDAY, *April* 17, 1888.

(Title of Court and Cause.)

The demurrer in this action having heretofore been argued and submitted to the court for its consideration and decision, and the court being fully advised in the premises, now renders its decision that the demurrer be overruled; to which ruling the defendants except.

The defendants, by their attorney, Geo. G. Berry, made a motion for continuance and filed an affidavit in support of said motion. The motion was granted on the showing and the case ordered continued for the term.

15 B 1.

Minute Entry. Order for Judgment.

Regular Term, April, 1889.

FRIDAY, *April 19th.*

WM. KEYSER
vs.
GEO. E. SHUTE *et al.*

This cause having heretofore been submitted to the court for its consideration and decision and by the court taken under advisement, and the court being now fully advised in the premises, it is by the court ordered that judgment be entered herein in favor of said plaintiff according to the prayer of said plaintiff's complaint, and it is hereby considered that a motion for a new trial is made and overruled, and the defendants hereby give notice of appeal to the supreme court of the Territory of Arizona, as per stipulation on file herein.

16 C 1.

Judgment.

In the District Court, Second Judicial District of Arizona Territory in and for the County of Gila.

WILLIAM KEYSER (a Resident of the City of Baltimore and State of Maryland), Plaintiff,
vs.
GEO. E. SHUTE (a Resident and Sheriff of Gila County, Territory of Arizona) and Adolph Ladenburg, Ernest Thalman, and Abraham Leinburger (as Copartners under the Firm Name of Ladenburg, Thalman & Co.), and all Citizens of the City of New York, in the State of New York, Defendants.

Now comes the parties herein, by their attorneys, and thereupon this case came on for hearing on the pleadings and evidence — was submitted to the court; on consideration whereof the court finds on the issues joined for the plaintiff and that the plaintiff is entitled to the relief prayed for.

It is, therefore, on the motion of the plaintiff, adjudged and decreed that the injunction heretofore granted in this action be, and the same is, made perpetual, and that the said defendants and each of them be, and they are, perpetually enjoined from selling the three

pieces of real estate mentioned or either of them under the three executions mentioned, set out, and described in the plaintiff's complaint or either of said executions.

17 It is further considered that the plaintiff recover from the defendants his costs herein expended, taxed at $39.65.

Dated this 19th day of April, 1889.

WM. W. PORTER, *Judge.*

18 In the Supreme Court, Territory of Arizona.

PHŒNIX, *January* 14, 1890.

WILLIAM KEYSER, Appellee,
vs.
GEORGE E. SHUTE *et al.*, Appellants.

Ordered that this cause be continued to the adjourned term of this court to be held at Tucson.

19 In the Supreme Court, Territory of Arizona.

TUCSON, *April* 14, 1890.

WILLIAM KEYSER, Plaintiff & Appellee,
vs.
GEORGE E. SHUTE *et al.*, Defendant- & Appellant-.

On motion of Geo. G. Berry, Esq., counsel for appellants, leave — granted appellants to file amend-ants to transcript, and, on filing amendment to transcript, ordered that motion to dismiss appeal be denied.

Ordered that the hearing of this cause be set for 1.30 o'clock to-day.

WILLIAM KEYSER, Appellee,
vs.
GEORGE E. SHUTE *et al.*, Appellants.

This cause came on regularly for hearing, was argued to the court by Geo. G. Berry, Esq., for appellant-, and Jas. A. Anderson, for appellee, and, being fully argued, was submitted.

20 In the Supreme Court of the Territory of Arizona in and for the County of Maricopa.

PHŒNIX, *January* 16, 1892.

WILLIAM KEYSER, Appellee,
vs.
GEORGE E. SHUTE *et al.*, Appellants.

This cause having heretofore, on the 14th day of April, 1890, been argued, submitted, and by the court taken under advisement, and the court being fully advised in the premises, wherefore it is by the court ordered, adjudged, and decreed that the judgment and

decision rendered herein by the district court of the 2nd judicial district of the Territory of Arizona in and for the county of Gila and from which this appeal was taken be, and the same is, in *in* all respects affirmed.

It is further ordered, adjudged, and decreed that the appelle-, William Keyser, do have and recover of the appellants and George G. Berry and E. H. Emanuel, the sureties on the appeal bond, his costs, taxed at thirty-nine and sixty-five one-hundredths (39.65) dollars; and it is further ordered that the appellee recover of the appellants his costs in this court, taxed at eight and fifty one-hundredths (88.50) dollars.

Opinion by Kibbey, J., Gooding, C. J., Sloan, J., and Wells, J., concurring.

21 GEORGE E. SHUTE, Sheriff, and ADOLF LADENBURG, ERNST Thalmann, and Abraham Limburger, as Copartners under the Firm Name of Ladenburg, Thalmann & Co., Appellants,

vs.

WILLIAM KEYSER, Appellee.

Statement of Facts in the Nature of a Special Verdict on Appeal to the Supreme Court of the United States.

I.

This case comes into the supreme court of the Territory of Arizona on appeal from the district court of the second judicial district of Arizona in and for the county of Gila by transcript filed in this court on the 13th day of January, A. D. 1890. This action was brought by the plaintiff to obtain an injunction against the defendants perpetually restraining them from selling the property of the Old Dominion Copper Mining Company at Globe, in Gila county, on the ground that the title to the property had passed to the plaintiff by virtue of a judgment by confession purporting to have been made by the company in New York and sent to Globe for filing and recording, reaching that town by Wells, Fargo & Co.'s express which arrived in that town at about 3 o'clock on the 23rd day of February, 1884. On the same day and by the same stage
22 that brought the confessed judgment writs of attachment reached Globe, directed to the sheriff of Gila county, and were by him levied upon the property of the Old Dominion Copper M. Co. soon after their receipt. Judgments were afterwards obtained in the attachment suits and executions levied upon all the property of the said Old Dominion Copper Mining Company, and the sheriff was proceeding to sell the same according to law when he was enjoined and restrained from selling under his said executions at the suit of the plaintiff, who alleged that by virtue of a sale under the judgment by confession filed on the same day the attachments were levied upon the property plaintiff had become the successor in interest of the Old Dominion Copper Mining Company, and by reason

of his alleged prior lien had a valid title to said property. The transcript shows that in February, 1888, William Keyser, a resident of Baltimore and a citizen of the State of Maryland, filed his complaint as plaintiff in said district court against George E. Shute, sheriff of Gila county and a resident thereof, and Adolf Ladenburg, Ernst Thalmann, and Abraham Limburger, as copartners under the firm name of Ladenburg, Thalmann & Co., all residents and citizens of the city and State of New York, as defendants, in which he sought to restrain said defendants from selling three pieces of real estate situate in said Gila county and in the complaint described, and which were then levied upon by said sheriff to satisfy certain executions in favor of said defendants Ladenburg, Thalman & Co., which complaint, after giving title of court and cause, is as follows, to wit:

23 *Complaint.*

The plaintiff complains and alleges—

First. That defendant George E. Shute is the sheriff of Gila county, Territory of Arizona.

Second. That defendants Adolf Ladenburg, Ernst Thalmann, and Abraham Limburger are copartners doing business in the city of New York, State of New York.

Third. That the Old Dominion Copper Mining Company is a corporation duly organized under the laws of the State of New York, and has heretofore been carrying on and transacting business in the Territory of Arizona.

Fourth. That on and prior to the 23rd day of February, 1884, the said Old Dominion Copper Mining Company was the owner of and in possession of the following-described real estate, situated in Gila county, Territory of Arizona, to wit, that certain mine or mining claim known and designated as the Globe mine, situated, lying, and being about one mile north of the town of Globe, Gila county, Territory of Arizona, and recorded in Book 4, pages 162, '3, Globe district and Globe county mining records; also that certain mine or mining claim known and designated as the Globe ledge, adjoining and being an extension of the above-described Globe mine, and is recorded in Book Four (4), on pages 163, '4, '5, Globe district and Gila county mining records; also that certain mill site known and designated as the Red Jacket mill site, and being the same upon which the Old Dominion Copper Company smelter stands, together with the machinery and appurtenances thereon and thereunto belonging. Said mill site is situated, lying, and being on the east bank of Pinal creek, about a quarter of a mile northerly from the northerly line of Globe, Gila county, Territory of Arizona, and is recorded in Book I, on page 157, Gila county mining records.

24 Fifth. That on the 23rd day of February, 1884, a judgment was duly entered in the district court of the second judicial district of the Territory of Arizona in and for the county of Gila against the said Old Dominion Copper Mining Company and in favor of Geo. Pope, George B. Cole, John W. Gerrett, William Key-

ser, George W. Wood, and John S. Gillman, of the firm of Pope, Cole & Co., for the sum of $277,378.27 and interest from January 31, 1884, and $10 cost. The said judgment was by confession, and the verified statement in writing made by the Old Dominion Copper Mining Company, authorizing the entry of said judgment, was duly filed with the clerk of this court on the 23rd day of February, 1884, and said clerk thereupon endorsed upon it and entered, at 5 o'clock p. m. of the same day, in the judgment book, a judgment for the sum of $277,378.27, with interest from January 31, 1884, the amount confessed, and $10 costs, and immediately thereafter said judgment was duly docketed by said clerk; that on the 26th day of January, 1886, an execution issued on said judgment and was placed in the hands of the sheriff of Gila county, Territory of Arizona, commanding him to cause to be made the moneys in said writ specified off of the land, tenements, and real property (if sufficient personal property of said debtor could not be found) belonging to said judgment debtor, the Old Dominion Copper Mining Company, on the 23rd day of February, 1884, or at any time thereafter; and there not being sufficient personal property of the said debtor, the said execution was, by the said sheriff, duly levied on all the right, title, and interest of the said judgment debtor in and to the said three pieces of real estate above described (together with other real estate of said debtor) as the property of said judgment debtor, and the same was duly sold under and by virtue of said execution and levy by said sheriff (together with other real estate of said debtor) to plaintiff on the 20th day of February, 1886, for the sum of $130,000, lawful money of the United States, and certificate of sale was duly issued to plaintiff therefor, and after the time for redemption had expired, to wit, on the 21st of August, 1886, a deed was duly executed by said sheriff to plaintiff for the real estate so sold by him to plaintiff; that in said levy, certificate of sale, and deed the first piece of property above described is described as follows, to wit:

"The Globe mine, patented by the United States Government to Benjamin W. Reagan on the 18th day of October, 1881, by patent recorded in the office of the recorder of Pinal county, Territory of Arizona, on the 19th day of November, 1881, to which record reference is made for a fuller description of said mine."

The third piece of property above described is described in said levy, certificate of sale, and deed as follows, to wit:

"The Copper Jack mill site, of which the location notice is recorded in the office of the recorder of Gila county, in Book 2 of Records of Mines, at page 311, to which record reference is hereby made for a fuller description of said mill site, and upon which the smelting works of the Old Dominion Copper Mining Company are situated."

That by virtue of said levy, sale, and deed plaintiff became vested with all the right, title, and interest in said three pieces of real estate that was vested in the Old Dominion Copper Mining Company on the 23rd of February, 1884, or at any time thereafter, and on the 21st day of August, 1886, entered into the possession

26 of said three pieces of real estate and has been in possession ever since and is now in possession thereof, owning and claiming title thereto is fee simple by virtue of and under said levy, sale, and deed.

Sixth. That on the 30th of November, 1887, three judgments were rendered in the district court, first judicial district of the Territory of Arizona in and for the county of Cochise, in favor of defendants Adolf Ladenburg, Ernst Thalmann, and Abraham Limburger, as copartners under the firm name of Ladenburg, Thalmann & Company, and against the Old Dominion Copper Mining Company—one for the sum of $7,500, principal, and interest amounting to $1,893.75, and costs of suit taken at $25.50; another for $7,500, principal, and interest, amounting to $1,893.75, and costs of suit taken at $22, and the other for $3,990, principal, and interest, amounting to $1,007.47, and costs of suit taken at $22; that executions issued on said judgments on the 16th day of January, 1888, and have been placed in the hands of defendant Geo. E. Shute (the sheriff of Gila county, Territory of Arizona), and the said sheriff, not regarding the rights of this plaintiff in the premises and in disregard thereof, has levied said executions upon said three pieces of real estate above described as the property of the said Old Dominion Copper Mining Company, and has advertised the same for sale on the 6th day of March, 1888, and will on said day sell the same by virtue of said executions unless restrained by the fiat of this honorable court, and plaintiff's title to said three pieces of real estate will thereby be clouded and involved and the value thereof be impaired and depreciated, to plaintiff's great and irreparable injury.

27 Wherefore plaintiff prays—

1st. That a writ of injunction issue restraining defendants and each of them from selling said three pieces of real estate under said executions.

2nd. That upon final hearing said injunction be made perpetual.

3rd. And for such other and further relief as may seem meet and proper in the premises.

ANDERSON, FITZGERALD & ANDERSON,
Attorneys for Plaintiff.

STATE OF CALIFORNIA, }
County of Los Angeles, } *ss:*

J. A. Anderson makes oath and says that he is one of the attorneys of the plaintiff in the foregoing complaint; that the plaintiff is absent in the State of Maryland, and that affiant, in plaintiff's behalf, makes this affidavit and says that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge except matters thereof stated upon information and belief, and that as to those matters he believes it to be true.

J. A. ANDERSON.

Sworn and subscribed before me this 25th day of February, 1888.
[NOTARY'S SEAL.] W. R. BURKE,
Notary Public in and for Los Angeles County, California.

28 II.

The transcript further shows that upon the filing of the complaint and before defendants answered the court granted an order of injunction, which order remained and which injunction continued in force until the final trial of the cause in the district court; which order is as follows, to wit:

Title of Court and Cause.

Order for Injunction.

The order heretofore made by me in the above action, directing the clerk of the above-entitled court to issue injunction as prayed for in the complaint herein upon the filing of a ten-thousand-dollar bond, conditioned as required by law, *it* is hereby modified, and said clerk is directed to issue said injunction as prayed for upon plaintiff filing a bond in the sum of five thousand dollars, conditioned as required by law.
March 2, 1888.

W. H. BARNES,
Associate Justice and Judge, First District.

III.

The transcript further shows that summons was duly issued in the cause, and in due time the defendants filed their answer, which, after giving the title of the court and cause, was as follows, to wit:

Answer.

Now comes the defendants above named and, answering plaintiff's complaint on file in said action, say:

1st. That the said complaint does not state any matter of equitable jurisdiction entitling plaintiff to an injunction, and that
29 the prayer of said complaint, therefore, should be denied and the said action dismissed.

2nd. Defendants, further answering, deny each and every allegation contained in the said complaint.

3rd. And for a further and separate answer to plaintiff's said complaint defendants say that on the said 23rd day of February, 1884, mentioned and referred to in paragraph V of plaintiff's said complaint, and before the entry and docketing of the said judgment therein referred to, said defendants had commenced three several actions in the district court of the first judicial district of the Territory of Arizona, in and for the county of Cochise, in favor of the said defendants Ladenburg, Thalmann & Co. and against the Old Domin-

ion Copper Mining Company, in which said suits *and* writs of attachment were severally issued and placed in the hands of the then sheriff of said Gila county, who duly served the same by making a levy on all the property belonging to the said Old Dominion Copper Mining Company then within the said county of Gila, which said property was the same property described in plaintiff's said complaint; that said levy upon said property of the Old Dominion Copper Mining Company was made by the said sheriff before the entry or docketing of the said judgment referred to in said complaint, and was, at the date, hour, and time therein mentioned as the time of the entry and docketing of the said judgment, a valid subsisting prior lien upon the said property described in the said complaint; that judgments were afterwards obtained in the same suits in favor of the said Ladenburg, Thalmann & Co. and against the said Old Dominion Copper Mining Company, being the same judgments described in paragraph VI of plaintiff's complaint,
30 upon which said judgments executions were duly issued and placed in the hands of the said defendant Geo. E. Shute, sheriff of said Gila county, for the enforcement of the said lien upon the said property created by the said writs of attachment theretofore issued and levied upon the said property in the said suits above referred to.

Wherefore defendants pray that plaintiff's prayer for an injunction be denied, and that said action be dismissed, and that defendants have judgment for their costs of suit.

GEO. G. BERRY,
Attorney for Defendants.

TERRITORY OF ARIZONA, } ss:
County of Cochise, }

Geo. G. Berry, being first duly sworn, says upon oath that he is the attorney of defendants in this action; that he has heard read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes them to be true. Affiant makes this affidavit because the defendants are absent from the Territory and because he is acquainted with all the facts.

GEO. G. BERRY.

Subscribed and sworn to before me this 2nd day of April, 1888.
[NOTARY'S SEAL.] W. D. SHEARER,
Notary Public.

31 IV.

The transcript further shows that afterwards, on the 16th day of April, 1888, and at the April term, the defendants' demurrer to plaintiff's complaint filed with his answer came on to be heard before the said district court, and that on the 17th day of April, 1888, the said court, being advised in the premises, overruled the said demur-

rer; to which ruling the defendants except, and, upon defendants' motion, the cause is continued for the term—

The orders therein being as follows, to wit:

Order Overruling Demurrer.

Title of Court and Cause.

On this 16th day of April, 1888, of the April term of the district court of the second judicial district of the Territory of Arizona in and for the county of Gila, this cause being regularly called for hearing and plaintiff and defendants represented by their respective counsel, the demurrer was argued and taken under advisement.

TUESDAY, *April* 17, 1888.

Title of Court and Cause.

The demurrer in this action having been heretofore argued and submitted to the court for its consideration and decision, *and* the court, being fully advised in the premises, now renders its decision that the demurrer be overruled; to which ruling defendants except.

The defendants, by their attorney, Geo. G. Berry, made a motion for a continuance and filed an affidavit in support of said motion.

The motion was granted on the showing and the case ordered continued for the term.

32 V.

The transcript further shows that at the October term, 1888, of said district court the cause came on for trial and was tried before said court without a jury, a jury being expressly waived by both parties, and was at said term of court submitted to the court for decision and judgment.

That at the next April term, 1889, of said court the court rendered its judgment for the plaintiff, William Keyser.

The minute entry of the same, after giving title of court and cause, is as follows, to wit:

Minute Entry: Order for Judgment.

Regular Term, April, 1889.

FRIDAY, *April 19th.*

This case having been heretofore submitted to the court for its consideration and decision and by the court taken under advisement, and the court being now fully advised in the premises, it is by the court ordered that judgment be entered herein in favor of said plaintiff, according to the prayer of said plaintiff's complaint; and it is hereby considered that a motion for a new trial is made and overruled, and the defendants hereby give notice of appeal to

the supreme court of the Territory of Arizona, as per stipulation on file herein.

The stipulation in the above minute entry referred to is shown in the transcript and is as follows, to wit:

33

Stipulation.

In the District Court of the Territory of Arizona in and for the County of Gila.

WILLIAM KEYSER, Plaintiff,
vs.
GEORGE E. SHUTE *et al.*, Defendants.

It is hereby stipulated between the parties to the above-entitled suit that when judgment is rendered therein at the April term, 1889, of said court that motion for a new trial shall be considered as made by the losing party and overruled, and that notice of appeal be considered as given in open court, and the clerk of said court is hereby authorized to make the proper entries in accordance with this stipulation.

Dated this 4th day of April, 1889.

ANDERSON, FITZGERALD & ANDERSON,
Attorneys for Plaintiff.
GEO. G. BERRY, *Attorney for Defendants.*

34 Whereupon judgment was rendered for plaintiff and against defendants, which judgment is as follows, to wit:

Judgment.

In the District Court, Second Judicial District of Arizona Territory in and for the County of Gila.

WILLIAM KEYSER (a Resident of the City of Baltimore and State of Maryland), Plaintiff,
vs.
GEO. E. SHUTE (a Resident and Sheriff of Gila County, Territory of Arizona) and Adolf Ladenburg, Ernest Thalmann, and Abraham Limburger (as Copartners under the Name of Ladenburg, Thalmann & Co.), and all Residents of the City of New York, in the State of New York, Defendants.

Now comes the parties herein, by their attorneys, and thereupon this case came on for hearing on the pleadings and evidence and was submitted to the court; on consideration whereof the court finds on the issues joined for the plaintiff, and that the plaintiff is entitled to the relief prayed for.

It is, therefore, on motion of the plaintiff, adjudged and decreed that the injunction heretofore granted in this action be, and the same is hereby, made perpetual, and that the said defendants and

each of them be, and they are hereby, perpetually enjoined from selling the three pieces of real estate mentioned, set out, and described in the plaintiff's complaint or either of them under the three executions mentioned, set out, and described in the plaintiff's complaint or under either of said executions. It is further considered that the plaintiff recover from the defendants his costs herein expended, taxed at $39.65

Dated this 19th day of April, 1889.

WM. W. PORTER, *Judge.*

35 VI.

The defendants, George E. Shute, sheriff, and Adolph Ladenburg, Ernst Thalmann, and Abraham Limburger, as co-artners under the firm name of Ladenburg, Thalmann & Co., duly appealed from said judgment entered by said district court against the- and in favor of said William Keyser to the supreme court of the Territory of Arizona and assigned as errors as follows, to wit:

Title of Court and Cause.

Assignment of Errors.

I.

Upon the trial of this case the court erred in refusing to dismiss said action when it was shown in evidence that the plaintiff long prior to the commencement of this action had conveyed the said property in dispute to the Old Dominion Copper Mining Company.

II.

The court erred in admitting in evidence against defendants' objection stated at the time the judgment-roll in case No. 172, district court Gila county, entitled Geo. A. Pope *et al. vs.* Old Dominion Copper Mining Company, as the same was a judgment purporting to have been made by the said Old Dominion Copper M. Co. in favor of the said Geo. A. Pope *et al.*, as the same was not shown to be the act of the corporation, nor does the statute of Arizona authorize the confession of a judgment to be made and entered by a corporation, either foreign or domestic.

36 III.

The court erred in holding that the docketing of the judgment by confession in favor of the said Geo. A. Pope *et al.* against the Old Dominion Copper Mining Company was prior in time to the lien created by defendants' attachment levied upon the property of the said Old Dominion Copper Mining Company on the 23rd of February, 1884.

IV.

The court erred in holding that in order to create a lien by attachment it was necessary that the writ, with its return endorsed thereon, should be filed in the office of the county recorder before the lien of attachment could commence to run, without regard to the time of levy.

GEO. G. BERRY,
Attorney for Defendants.

37 VII.

The transcript also contains the following recitations as to proceedings that took place at the trial, to wit:

F.

Minute Entry and Judgment-Roll. Case No. 172.

In the District Court, Second Judicial District of the Territory of Arizona in and for the County of Gila, Regular Term, October, 1888.

MONDAY, *October 16th.*

WM. KEYSER
vs.
GEO. E. SHUTE *et al.* } No. 302.

This cause coming on for trial before the court without a jury, J. A. Anderson, Esq., appearing as counsel for plaintiff and Geo. G. Berry, Esq., as counsel for defendants, plaintiff offered in evidence the judgment-roll in district-court case No. 172, district court of Gila county, Arizona, entitled "Geo. A. Pope *et al. vs.* Old Dominion Copper Mining Company." Defendants object to the introduction of this instrument, purporting to be a judgment-roll of a judgment by confession, on the grounds—

1st. That it does not appear to be the act of the Old Dominion Copper Mining Company, but is merely the act of two persons representing themselves to be the president and secretary of the Old Dominion Copper Mining Company, a corporation; and

38 2nd. If it was shown to be executed by authority of the said corporation, still it is worthless and void as a judgment under the laws of the Territory of Arizona, as said laws do not authorize the entry of a judgment by confession in favor of either a foreign or domestic corporation; and

3rd. If such power did exist under the laws of the Territory of Arizona, the instrument purporting to be a confession of judgment was not executed by any person authorized thereto.

In the District Court of the Second Judicial District in and for the County of Gila, Territory of Arizona.

GEORGE A. POPE and GEORGE B. COLE, General, and John W. Garrett, William Keyser, George W. Ward, and John S. Gilman, Special, Copartners under the Laws of the State of Maryland, Doing Business as Such Copartners under the Firm Name of Pope, Cole & Co., Plaintiffs,
against
THE OLD DOMINION COPPER MINING COMPANY (a Corporation), Defendant.

Judgment by Confession.

The Old Dominion Copper Mining Company, a corporation duly organized and existing under and by virtue of the laws of the State of New York, whose principal office is in the city of New York, in the county and State of New York, but whose mining operations are carried on in the county of Gila, in the Territory of Arizona, defendants in the above entitled action, by Sylvester M. Hamilton, president of said company, and Thomas S. Acheson, secretary thereof, doth hereby confess judgment in favor of George Pope and George B. Cole, general, and John W. Garrett, William Keyser, George W. Ford, and John S. Gillman, special, copartners
39 under the laws of the State of Maryland, doing business as such copartners under the firm name of Pope, Cole & Co., of the city of Baltimore, in the State of Maryland, the plaintiffs in said action, for the sum of two hundred and seventy-seven thousand three hundred and seventy-eight $\frac{27}{100}$ ($277,378.27) dollars, and doth hereby authorize judgment to be rendered therefor by the above-entitled court against said defendant corporation, with legal interest thereon from the 31st day of January, 1884.

This confession of judgment is for a debt justly due and owing to the said plaintiffs, as such copartners and under said their firm name of Pope, Cole & Co., from said defendant corporation, arising from the following facts: The defendant corporation and the plaintiffs, the latter under said their firm name of Pope, Cole & Co., have, on and subsequent to the 22nd day of May, 1882, had various dealings and transactions in business with each other, of which an account to the 31st day of January, 1884, has been duly stated and of which a résumé is hereto annexed, marked "Exhibit A," which résumé is now referred to and the same is made a part of this confession of judgment, a voucher for each and every expenditure charged having been heretofore furnished to the defendant corporation and by it found correct, in the course of which said dealings and transactions in business with the defendant corporation the plaintiffs, under said their firm name of Pope, Cole & Co., have (as per said résumé, Exhibit A) made advances of moneys to the corporation and payments in cash and by acceptances; have paid wagon and railroad freights on copper in and from Arizona to Balti-

more, in Maryland; have paid for diamond-drill outfit;
40 have paid for coke furnished the corporation since July 1, 1883; have paid for railroad freight on coke and various supplies to Wilcox, in Arizona, since July 1, 1883; have remitted cash to the corporation's superintendent at Globe, in Arizona, for the corporation's pay-roll and various supplies since July 1, 1883, and have furnished the corporation miniature copper ingots, each and all of which advances and payments were so made and each and all of which things were so done for the corporation at the request and to the use of the corporation, and plaintiffs, under said firm name of Pope, Cole & Co., are entitled to payment by the corporation of interest (as per said résumé, Exhibit A) on said advances, payments, and transactions, and are entitled also to payment by the corporation of commissions (as per said résumé, Exhibit A) for advancing and services as per contracts with the corporation, the aggregate amount of all which advances, payments, transactions, interest, and commissions amounted, on the 31st day of January, 1884 (as per said résumé, Exhibit A), to one million ninety-four thousand five hundred and ninety-six $\frac{67}{100}$ ($1,094,596.67) dollars, and the credits to which the corporation is entitled in the course of said dealings and to the 31st day of January, 1884, amount (as per said résumé, Exhibit A) to eight hundred and seventeen thousand two hundred and eighteen $\frac{40}{100}$ ($817,218.40) dollars and to no more, being the proceeds of six millions ninety thousand and eighty-three (6,090,083) pounds of fine copper, leaving balance at debit of said corporation, the Old Dominion Copper Mining Company, January 31, 1884, to said plaintiffs, under said their firm name of Pope, Cole &
41 Co., of said sum of two hundred and seventy-seven thousand three hundred and seventy-eight $\frac{27}{100}$ ($277,378.27) dollars, justly due and owing by the corporation *the* the plaintiffs under their said firm name of Pope, Cole & Co. and for which this judgment is confessed.

Now, therefore, these presents witness that the said sum of two hundred and seventy-seven thousand three hundred and seventy-eight $\frac{27}{100}$ ($277,378.27) dollars is now justly due the plaintiffs herein under said their firm name of Pope, Cole & Co. by said defendant corporation, the Old Dominion Copper Mining Company, no part of which has been paid.

Dated New York, January 31, 1884.

THE OLD DOMINION COPPER MINING COMPANY,
By S. M. HAMILTON, *President.*

Signed, sealed, and delivered in the presence of—
WILLIAM H. CLARKSON.

[Seal O. D. C. M. Co.]

Attest: T. S. ATCHESON, *Secretary.*

42 EXHIBIT A.

Résumé.

The Old Dominion Copper Mining Company in account with Pope, Cole & Co. from 22nd of May, 1882, to 31st of January, 1884.

Vouchers for each and every expenditure charged have been furnished the company.

To advances to said company and payments in cash and by acceptances	$611,953 15
To paid wagon and railroad freights on copper to Baltimore	123,117 98
To paid for diamond-drill outfit	4,075 78
To paid for coke furnished company since 1st September, 1883	23,774 06
To paid railroad freight on coke and supplies to Wilcox since 1st September, 1883	35,888 51
To paid wagon freight on coke and supplies to Globe since 1st September, 1883	90,243 49
To cash remitted to Superintendent Thomas at Globe for pay-roll and supplies since 1st September, 1883	184,400 00
To miniature copper ingots furnished company	55 25
To interest	8,734 34
To commission for advancing and services as per contracts	9,354 11
	$1,094,596 67
By proceeds of 6,090,083 pounds fine copper	827,218 40
Balance at debit of Old Dominion Copper Mining Company 31st January, 1884	$277,378 27

43 STATE OF NEW YORK, *City and County of New York,* } *ss:*

S. M. Hamilton and T. S. Atchison, being each duly sworn, jointly and severally depose and say:

We are respectively president and secretary of The Old Dominion Copper Mining Company, the defendant in the action above entitled. We are the persons who signed the above statement as such officers, and we know that said defendant corporation is justly indebted to George A. Pope and George B. Cole, general, and John W. Garrett, William Keyser, George W. Ward, and John S. Gilman, special, copartners under the laws of the State of Maryland, doing business as such copartners under the firm name of Pope, Cole & Co., the plaintiffs in the said action, in the sum of two hundred and

seventy-seven thousand three hundred and seventy-eight $\frac{27}{100}$ ($277,378.27) dollars in said statement mentioned, and that the matters of fact set forth in the above confession and statement are true.

SYLVESTER M. HAMILTON.
T. S. ATCHESON.

Subscribed in my presence and sworn to before me this 13th day of February, A. D. 1884.

Witness my hand and official seal.

[Commissioner's Seal.]

WILLIAM H. CLARKSON,
Commissioner for the Territory of Arizona in New York, No. 115 Broadway, New York City.

44 STATE OF NEW YORK, } ss:
City and County of New York, }

Be it remembered that on this 13th day of February, A. D. 1884, before me, William H. Clarkson, a commissioner of deeds of the Territory of Arizona, personally appeared Sylvester M. Hamilton, president, and T. S. Atcheson, secretary, of the Old Dominion Copper Mining Company aforesaid, who are personally known to me to be the persons described in and who executed the foregoing instrument, and severally acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned; and, being duly sworn, they did depose and say that they were the above-described officers of said company; that the seal affixed to the foregoing instrument is the corporate seal of said company; that it was affixed thereto by authority of said company, and that they signed their names thereto as the president and secretary of said company by the same authority; and they further acknowledged to me that they executed the same as their free and voluntary act and deed of the said Old Dominion Copper Mining Company aforesaid.

In witness whereof I have hereunto set my hand and affixed my official seal this 13th day of February, A. D. 1884.

[SEAL.] WILLIAM H. CLARKSON,
Commissioner for Arizona in New York,
117 *Broadway, New York City.*

(Endorsed:) No. 172. In the district court of the second judicial district in and for the county of Gila, Territory of Arizona. George A. Pope, George B. Cole, and others, plaintiffs, against The Old Dominion Copper Mining Company, defendant. Confession of judgment, dated January 31, 1884, for $277,378.27, with interest from said date. Filed February 23, 1884, at 4.30 p. m. H. M. Snapp, clerk.

45 In the District Court of the Second Judicial District of the Territory of Arizona in and for the County of Gila.

GEORGE A. POPE and GEORGE B. COLE, General, and JOHN W. Garrett, William Keyser, George W. Ward, and John S. Gilman, Special, Copartners under the Firm Name of Pope, Cole & Co., *against* THE OLD DOMINION COPPER MINING COMPANY (a Corporation).

In this action the defendant, The Old Dominion Copper Mining Company, having filed its confession of judgment, wherein it authorizes and consents that judgment be entered in favor of the plaintiff for the sum of two hundred and seventy-seven thousand three hundred and seventy-eight $\frac{27}{100}$ ($277,378.27) dollars and legal interest thereon from the 31st day of January, 1884, therefore, by reason of the law and the premises aforesaid, it is ordered, adjudged, and decreed that the plaintiffs, George A. Pope and George B. Cole, general, and John W. Garrett, William Keyser, George W. Ward, and John S. Gilman, special, copartners under the firm name of Pope, Cole & Co., do have and recover of and from the defendant, The Old Dominion Copper Mining Company, the sum of two hundred and seventy-seven thousand three hundred and seventy-eight $\frac{27}{100}$ ($277,378.27) dollars, lawful money of the United States, together with legal interest thereon from the 31st day of January, 1884, and the sum of ten dollars as the plaintiffs' costs incurred herein.

H. M. SNAPP, *Clerk.*

Dated February 23, 1884.

Recorded February 23, 1884, at 5 p. m.

46 In the District Court of the Second Judicial District of the County of Gila, Territory of Arizona.

GEORGE A. POPE, GEORGE B. COLE, and Others, Plaintiffs, *vs.* OLD DOMINION COPPER MINING COMPANY, Defendant.

I, the undersigned, clerk of the district court of the second judicial district of said Territory in and for said county, do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled action and recorded in Judgment Book 1 of said court, at page 107, and I further certify that the foregoing papers, hereto annexed, constitute the judgment-roll in said action.

Witness my hand and the seal of the district court this 23rd day of February, 1884.

[District Court Seal.]

H. M. SNAPP, *Clerk.*

(Endorsed:) No. 172. District court of the second judicial district, county of Gila. George A. Pope, George B. Cole, and others, plaintiffs, *vs.* The Old Diminion Copper Mining Company, defendant. Judgment-roll. Filed February 23rd, 1884, at 5 p. m. H. M. Snapp, clerk.

47

G.

Minute Entry and Transcript Judgment Docket in Case No. 172.

Plaintiff offers in evidence judgment docket showing docketing of judgment in case 172, Geo. A. Pope *et al. vs.* The Old Dominion Copper Mining Company.

Defendants object to the introduction of said judgment docket on the ground that there is no valid judgment entered in the case.

48

Register No.	Judgment debtors.	Judgment creditors.	Judgment.	Date of judgment.	When entered on judgment book.	Satisfaction of judgment when entered.
172	Old Dominion Copper Mining Company.	Pope, Cole & Co.	$277,378.27 and interest from January 31, 1884, and 10 dollars costs.	Feb. 23, 1884	Feb. 23, 1884	

49

H.

Minute Entry and Copy Execution, Case No. 172.

Plaintiff offers in evidence the execution in case No. 172, Geo. A. Pope *et al. vs.* The Old Dominion Copper Mining Company, showing levy and sale and return of officer.

Defendants object to the introduction of the execution on the ground that there is no valid judgment in the case to support an execution.

District Court, Second Judicial District, Territory of Arizona, in and for the County of Gila.

The Territory of Arizona to the sheriff of Gila county, Arizona Territory, Greeting:

Whereas on the 23rd day of February, A. D. 1884, George A. Pope, George B. Cole, John W. Garrett, William Keyser, George W. Ward, and John S. Gilman, of the firm of Pope, Cole & Co., recovered a judgment in the said district court of the second judicial district of the Territory of Arizona in and for the county of Gila against the Old Dominion Copper Mining Company for the sum of $277,378.27 damages, with interest thereon at the rate of ten per cent. per annum from January 31, 1884, till paid, together with $10 costs and disbursements at the date of said judgment and
50 accruing costs, amounting to the sum of $277,388.27, as appears to us of record;

And whereas the judgment-roll in the action in which said judgment was entered is filed in the clerk's office of said court, in the said county of Gila, and the said judgment was docketed in said clerk's office, in the said county, on the day and year first above mentioned;

And the sum of $171,000, with interest from this date at the rate of ten per cent. per annum, is now (at the date of this writ) actually due on said judgment:

Now you, the said sheriff, are hereby required to make the said sums due on the said judgment for damages, with interest as aforesaid, and costs and accruing costs to satisfy the said judgment out of the personal property of said debtor, the Old Dominion Copper Mining Company, or if sufficient personal property of said debtor cannot be found, then out of the real property in your county belonging to the Old Dominion Copper Mining Company on the day whereon said judgment was docketed in the said county or at any time thereafter, and make return of this writ within 60 days after your receipt hereof with what you have done endorsed herein.

Witness Hon. Wm. W. Porter, judge of the said second judicial district of the Territory of Arizona, at the court-house, in the city of Globe, county of Gila, this 26th day of January, A. D. 1886.

Attest my hand and the seal of said court the day and year last above written.

[District Court Seal.]

B. G. FOX, *Clerk.*

51 By virtue of the annexed execution in favor of George Pope, George B. Cole, John W. Garrett, William Keyser, George M. Ward, and John S. Gilman, of the firm of Pope, Cole & Co., and against the Old Dominion Copper Mining Company (there being no personal property of the defendant to be found in my county after diligent search)—

I, B. F. Pascoe, sheriff of Gila county, Arizona, have this day levied upon all the right, title, and interest of the defendant, The Old Dominion Copper Mining Company, in and to the following-described real estate, as situated in the county of Gila, Territory of Arizona, to wit:

1. The Globe mine, patented by the United States Government to John W. Reagan on the 18th day of October, 1881, by patent recorded in the office of the recorder of Pinal county, Territory of Arizona, on the 19th day of November, 1881, to which record reference is made for a fuller description of said mine.

2. The Globe Ledge mine, patented by the United States Government to John W. Reagan on the 18th day of October, 1881, by patent recorded in the office of the recorder of Pinal county, Territory of Arizona, on the 19th day of November, 1881, to which record reference is made for a fuller description of said mine.

3. The Copper Jack mill site, of which the location notice is recorded in the office of the recorder of Gila county, Arizona, in Book 2 of Record of Mines, at page 311, and to which reference is hereby made for a fuller description of said mill site and upon which the smelting works of the Old Dominion Copper Mining Company are situated.

52 4. The Globe mill site, of which the location notice is recorded in the office of the recorder of Gila county, Arizona,

in Book 2 of Record of Mines, at page 311, to which record reference is hereby made for a fuller description of said mill site.

5. The Globe Ledge mill site, of which the location notice is recorded in the office of the recorder of Gila county, Arizona, in Book 2 of Record of Mines, at page 310, to which record reference is hereby made for a fuller description of said mill site.

6. The Southeast Globe mine, of which the location notice is recorded in the office of the recorder of Gila county, Arizona, in Book 2 of Record of Mines, at page 312, and reference is hereby made to said record for a fuller description of said mine.

7. The Old Dominion mine, entered by the Old Dominion Copper Mining Company on the 17th day of December, 1883, in the United States land office at Tucson, Arizona, entry No. 267, lot No. 45, situated in Globe mining district, in Gila county, Arizona.

8. The New York mine, entered by the Old Dominion Copper Mining Company on the 17th day of December, 1883, in the United States land office at Tucson, in Arizona, entry No. 68, lot No. 46, in Globe mining district, in Gila county, Arizona.

9. The Chicago mine, entered by the Old Dominion Copper Company on the 17th day of December, 1883, in the United States land office at Tucson, Arizona, entry No. 269, lot No. 51, in Globe mining district, Gila county, Arizona.

53 10. The Keystone mine, entered by the Old Dominion Copper Mining Company on the 17th day of October, 1885, in the United States land office at Tucson, Arizona, entry No. 384, lot No. 54, in Globe mining district, Gila county, Arizona.

11. The Bonanza mine, the location notice of which is recorded in the office of the recorder of Gila county, Arizona, in Book 1 of Records of Mines, page 336, and reference is hereby made to said record for a fuller description of said mine.

12. The Little Dick mine, the location notice of which is recorded in the office of the recorder of Gila county, Arizona, in Book 1 of Records of Mines, page 335, and reference is hereby made to said record for a fuller description of said mine.

13. The Black Copper mine, the location notice of which is recorded in the office of the recorder of Gila county, Arizona, in Book 1 of Records of Mines, page 316, and reference is hereby made to said record for a fuller description of said mine.

14. The Copper Jack mine, the location notice of which is recorded in the office of the recorder of Gila county, Arizona, in Book 1 of Records of Mines, page 115, and reference is hereby made to said record for a fuller description of said mine.

15. The Copper Bottom mine, the location of which is recorded in the office of the recorder of Gila county, Arizona, in Book 2 of Records of Mines, page 585, and reference is hereby made to said record for a fuller description of said mine.

54 16. The Copper Top mine, the location notice of which is recorded in the office of the recorder of Gila county, Arizona, in Book 2 of Records of Mines, page 583, and reference is hereby made to said record for a fuller description of said mine.

17. The Copperosity mine, the location notice of which is re-

corded in the office of the recorder of Gila county, Arizona, in Book 2 of Records of Mines, page 586, and reference is hereby made to said record for a fuller description of said mine.

18. The Copperine mine, the location notice of which is recorded in the office of the recorder of Gila county, Arizona, in Book 2 of Records of Mines, page 584, and reference is hereby made to said record for a fuller description of said mine.

19. The Copper Bottom mill site, the location notice of which is recorded in the office of the recorder of Gila county, Arizona, in Book 2 of Records of Mines, page 583, and reference is hereby made to said records for a fuller description of said mill site.

20. A lot or parcel of land situated near the Bloody Tanks and deeded by E. A. Saxe to the Old Dominion Copper Mining Company, deed recorded in Book 1 of Deeds to Real Estate, at pages 126 and 127, in the office of the recorder of Gila county, Arizona, and reference is hereby made to said record for a fuller description of said land.

21. The Keystone mill site, the location notice of which is recorded in the office of the recorder of Gila county, Arizona, in Book
55 1 of Records of Mines, page 529, and reference is hereby made to said record for a fuller description of said mill site.

22. The Fraction mine, the location notice of which is recorded in the office of the recorder of Gila county, Arizona, in Book 2 of Records of Mines, page 569, and reference is hereby made to said record for a fuller description of said mine.

This 26th day of January, 1886.

B. F. PASCOE, *Sheriff.*

GLOBE, GILA COUNTY, TERRITORY OF ARIZONA,
February 20, 1886.

By virtue of the annexed execution I did, on the 20th day of February, 1886, in front of my office, in Globe, proceed to sell the real estate set out and described in the foregoing levy to the highest and best bidder for cash, and William Keyser, one of the plaintiffs in said execution and now the sole owner of the judgment on which said execution issued, being the highest and best bidder for said property, and for each parcel thereof, which was sold in twenty-two parcels, the said real estate was sold and knocked down to him as sold for the sum of $130,000, and I have this day given him a certificate to that effect, and the said sum of $130,000 was by me appropriated as follows, to wit: The sum of $2,765.00 retained for costs and commissions, and the balance thereof paid over to the said William Keyser, amounting to the sum of $127,235, and the
56 receipt of his attorney taken therefor, and the same is a credit on the said judgment and execution, as shown per statement on back of annexed execution.

This 20th day of February, 1888.

B. F. PASCOE, *Sheriff.*

(Endorsed.)

Amount of judgment		$171,000 00
Interest from January 26, 1886, to February 20, 1886		1,187 50
Accrued costs		10 00
Total due on judgment February 20, 1886		$172,197 50
Amount of proceeds of sale	$130,000 00	
Sheriff's costs and commissions	2,765 00	
Amount paid owner of judgment	$127,235 00	$127,235 00
Amount still due on judgment February 20, 1886		$44,962 50

No. 172. In district court. Pope, Cole & Co., plaintiff-, *vs.* Old Dominion C. M. Co., defendant. Execution. Filed February 25, 1886. B. G. Fox, clerk.

57 I.

Minute Entry and Copy Deed Sheriff, to Keyser.

Plaintiff offers in evidence deed of sheriff to Wm. Keyser, dated and acknowledged the 28th day of August, 1886.

Defendants object to introduction in evidence of the sheriff's deed on the ground that there was no valid judgment or execution to support the deed, and on the further ground that it is irrelevant and immaterial as showing title in plaintiff for the reason that the records show that prior to the commencement of this action plaintiff had sold and conveyed the property therein described to the Old Dominion Copper Mining Company, a corporation of Baltimore, Maryland.

This indenture, made this 21st day of August, 1886, between B. F. Pascoe, sheriff of the county of Gila, Territory of Arizona, of the first part, and William Keyser, of Baltimore, Maryland, the party of the second part, witnesseth:

Whereas, by virtue of a writ of execution, issued out of and under the seal of the district court of the second judicial district, of the Territory of Arizona, in and for the county of Gila, tested the 26th day of January, 1886, upon a judgment recovered in said court on the 23rd day of February, 1884, in favor of George Pope, George B. Cole, John W. Garrett, William Keyser, George M. Ward and John S. Gilman, of the firm of Pope, Cole & Co., and against the Old Dominion Copper Mining Company, to the said sheriff directed and delivered, commanding him that of the personal property of the said judgment debtor, the Old

58 Dominion Copper Mining Company, in his county, he should cause to be made certain moneys in the said writ specified; and if sufficient personal property of the said judgment debtor, the Old Dominion Copper Mining Company could not be found, that then he should cause the amount of said judgment to be made of the lands, tenements, and real property belonging to said judgment

debtor, the Old Dominion Copper Mining Company, on the 23rd day of February, 1884, or at any time thereafter; and whereas, because sufficient personal property of the said judgment debtor the Old Dominion Copper Mining Company, could not be found, whereof he, the said sheriff, could cause to be made the moneys specified in said writ, he, the said sheriff, did, in obedience to said command, levy on, take and seize all the estate, right title and interest which the said judgment debtor, the Old Dominion Copper Mining Company, so had, of, in and to the real estate and premises hereinafter described and set forth, with the appurtenances, and did, on the 20th day of February, 1886, sell the said premises at public auction in front of the court-house, in said county of Gila, at the hour of twelve o'clock noon of that day, after having first given notice of the time and place of such sale as required by law, at which sale the said premises were struck off and sold to the said William Keyser, party of the second part, for the sum of one hundred and thirty thousand dollars, lawful money of the United States, the said party of the second part being the highest bidder, and that being the highest sum bidden, and the whole price paid for the same; and whereas, the said sheriff, after receiving from said purchaser the said sum of money so bidden as aforesaid, gave to the said
59 party of the second part such certificate as is by law directed to be given and filed and recorded in the office of the county recorder of said Gila county a duplicate of such certificate; and whereas, six months after such sale have expired without any redemption of said premises having been made.

Now this indenture witnesseth that B. F. Pascoe, sheriff aforesaid, and party hereto of the first part, by virtue of said writ and in pursuance of the statute in such case made and provided, for and in consideration of the sum of money above mentioned, to him in hand paid as aforesaid by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, conveyed and confirmed, and by these presents doth grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns, all the estate, right, title and interest which the said judgment debtor, the said Old Dominion Copper Mining Company, had on the 23rd day of February, 1884, or at any time afterwards, or now has of, in and to all the following-described premises, situate, lying and being in the county of Gila, Arizona Territory, viz:

1. The Globe mine, patented by the United States Government to John W. Reagan on the 18th day of October, 1881, by patent recorded in the office of the recorder of Pinal county, Territory of Arizona, on the 19th day of November, 1881, to which record reference is made for a fuller description of said mine.

2. The Globe Ledge mine, patented by the United States Government to John W. Reagan on the 18th day of October, 1881, by patent recorded in the office of the recorder of Pinal
60 county, Territory of Arizona, to which record reference is made for a fuller description of said mine.

3. The Copper Jack mill site, of which the location notice is re-

corded in the office of the recorder of Gila county, Arizona, in Book 2, of Record of Mines, at page 311, and to which record reference is hereby made for a fuller description of said mill site and upon which the smelting works of the Old Dominion Copper Mining Company are situated.

4. The Globe mill site, of which the location notice is recorded in the office of the recorder of Gila county, Arizona, in Book 2, of Record of Mines, at page 311, to which record reference is hereby made for a fuller description of said mill site.

5. The Globe Ledge mill site, of which the location notice is recorded in the office of the recorder of Gila county, Arizona, in Book 2, of Record of Mines, at page 310, to which record reference is hereby made for a fuller description of said mill site.

6. The Southeast Globe mine, of which the location notice is recorded in the office of the recorder of Gila county, Arizona, in Book 2, of Record of Mines, at page 312, and reference is hereby made to said record for a fuller description of said mine.

7. The Old Dominion mine, entered by the Old Dominion Copper Mining Company on the 17th day of December, 1883, in the United States land office at Tucson, Arizona, entry No. 267, lot No. 45, situated in Globe mining district, in Gila county, Arizona.

61 8. The New York mine, entered by the Old Dominion Copper Mining Company on the 17th day of December 1883, in the United States land office at Tucson, Arizona, entry No. 68, lot No. 46, in Globe mining district, in Gila county, Arizona.

9. The Chicago mine, entered by the Old Dominion Copper Mining Company on the 17th day of December 1883, in the United States land office at Tucson, Arizona, entry No. 269, lot No. 51, in Globe mining district, Gila county, Arizona.

10. The Keystone mine, entered by the Old Dominion Copper Mining Company on the 17th day of December, 1885, in the United States land office at Tucson, Arizona, entry No. 384, lot No. 54, in Globe mining district, Gila county, Arizona.

11. The Bonanza mine, the location notice of which is recorded in the office of the recorder of Gila county, Arizona, in Book 1, of Records of Mines, page 336, and reference is hereby made to said record for a fuller description of said mine.

12. The Little Dick mine, the location notice of which is recorded in the office of the recorder of Gila county, Arizona, in Book 1, of Records of Mines, page 336, and reference is hereby made to said record for a fuller description of said mine.

13. The Black Copper mine, the location notice of which is recorded in the office of the recorder of Gila county, Arizona, in Book 1, of Records of Mines, page 316, and reference is hereby made to said record for a fuller description of said mine.

14. The Copper Jack mine, the location notice of which is recorded in the office of the recorder of Gila county, Arizona,

62 in Book 1, of Records of Mines, page 115, and reference is hereby made to said record for a fuller description of said mine.

15. The Copper Bottom mine, the location notice of which is re-

corded in the office of the recorder of Gila county, Arizona, in Book 2, of Records of Mines, page 585, and reference is hereby made to said record for a fuller description of said mine.

16. The Copper Top mine, the location notice of which is recorded in the office of the recorder of Gila county, Arizona, in Book 2, of Records of Mines, page 583, and reference is hereby made to said record for a fuller description of said mine.

17. The Copperosity mine, the location notice of which is recorded in the office of the recorder of Gila county, Arizona, in Book 2, of Records of Mines, page 586, and reference is hereby made to said record for a fuller description of said mine.

18. The Copperine mine, the location notice of which is recorded in the office of the recorder of deeds of Gila county, Arizona, in Book 2, of Records of Mines, page 584, and reference is hereby made to said record for a fuller description of said mine.

19. The Copper Bottom mill site, the location notice of which is recorded in the office of the recorder of Gila county, Arizona, in Book 2, of Records of Mines, page 583, and reference is hereby made to said records for a fuller description of said mill site.

20. A lot or parcel of land, situated near the Bloody Tanks
63 and deeded by E. A. Saxe to the Old Dominion Copper Mining Company; deed recorded in Book 1, of Deeds to Real Estate, at pages 126 and 127, in the office of the recorder of Gila county, Arizona, and reference is hereby made to said record for a fuller description of said parcel of land.

21. The Keystone mill site, the location notice of which is recorded in the office of the recorder of Gila county Arizona, in Book 1, of Records of Mines, page 529, and reference is hereby made to said record for a fuller description of said mill site.

22. The Fraction mine, the location notice of which is recorded in the office of the recorder of Gila county Arizona, in Book 2, of Records of Mines, page 569, and reference is hereby made to said record for a fuller description of said mine.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining; to have and to hold the said premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, forever, as fully and absolutely as he, the said sheriff, aforesaid, can, may, or ought to *be*, by virtue of the said writ and of the statute in such case made and provided, grant, bargain, sell, release, consign, convey and conform the same.

In witness whereof the said sheriff, the party of the first
[SEAL.] part, to these presents has hereunto set his hand and seal the day and year first above written.

B. F. PASCOE, *Sheriff.*

64 TERRITORY OF ARIZONA, } ss:
County of Gila, }

On this 28th day of August, 1886, personally appeared before me, Charles T. Martin, a notary public in and for said county, B. F. Pascoe, sheriff of said Gila county, known to me to be the person described in and who executed the foregoing instrument, and who acknowledged to me that he, as such sheriff, executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my
[NOTARY'S SEAL.] hand and affixed my official seal the day and year in this certificate first above written.

CHAS. T. MARTIN,
Notary Public.

Recorded at the request of Dr. A. Trippel at 11 o'clock a. m., August 28, 1886.

CHAS. T. MARTIN, *Recorder.*

Book 2, Deeds to Mines, pages 495 to 501, inclusive.

TERRITORY OF ARIZONA, } ss:
County of Gila, }

I, C. T. Martin, county recorder in and for said county, Territory aforesaid, do hereby certify that the above and foregoing is a full, true, and correct copy of a "deed — B. F. Pascoe, sheriff, to William Keyser" as the same appears of record in my office in Book 2 of Mine Deed-, at page 495.

[RECORDER'S SEAL.] Given under my hand and official seal this 24th day of December, 1887.

CHAS. T. MARTIN, *Recorder.*

(Endorsed:) No. 302. District court, Gila county, Arizona. Wm. Keyser *vs.* Geo. E. Shute *et al.* Sheriff's deed. Filed by agreement of parties in place of original deed October 16, 1888. B. G. Fox, clerk.

65 J.

Minute Entry, Copy Writ of Attachment No. 876, *Return, and Amended Return.*

Defendants offer in evidence three copies of writs of attachment, Nos. 876, 877, and 878, district court, county of Cochise, Territory of Arizona, entitled "Adolf Ladenburg *at al. vs.* The Old Dominion Copper Mining Company." Plaintiff objects to the introduction of sheriff's amended returns to the writs of attachment on the ground that the amended returns were made since the beginning of the present suit, because they were made in the shape of affidavits of the sheriff, dated and sworn to January 28, 1886, and because they

are unnecessary and not needed in the cases, as the original returns were all that were required by law and in full compliance of what the law required; that the additional matters stated in said amended returns are not such sayings as are required by law to be embraced in a return, and the sheriff's returns are no evidence thereof; for the further reason that — *is* attempted to be used against a party who was no party to the proceedings in which they were made and is an attempt to interfere with and deprive him of rights and property acquired under the records as they existed prior to said attempted amendments, and said amended returns were made without notice to defendant in said cases. Returns were then read.

66 In the District Court of the Second Judicial District of the Territory of Arizona in and for the County of Cochise.

ADOLF LADENBURG *et al.*, Plaintiff-,
vs.
OLD DOMINION COPPER MINING COMPANY, Defendant.

The Territory of Arizona to the sheriff of the county of Gila, Greeting:

Whereas *that* above-entitled action was commenced in the district court of the second judicial district of the Territory of Arizona in and for the county of Cochise by the plaintiff- in the said action to recover from the defendant in the said action the sum of seven thousand five hundred dollars, lawful money of the United States, besides interest, at the rate of six per cent. per annum, from the 13th day of September, 1883, and costs of suit, and the necessary affidavit and undertaking herein having been filed as required by law:

Now, we do therefore command you, the said sheriff, that you attach and safely keep all property of the said defendant within your said county not exempt from execution, or so much thereof as may be sufficient to satisfy the said plaintiffs' demand as above mentioned, unless the said defendant give you security by an undertaking of at least two sufficient sureties in an amount sufficient to
67 satisfy such demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached, in which case you will take such undertaking; and hereof make due and legal service and return.

Witness Hon. D. H. Pinney, judge of the said district [SEAL.] court of the second judicial district, this 16th day of February, 1884.

Attest my hand and the seal of said court this 16th day of February, 1884.

W. H. SEAMANS, *Clerk*,
By JOHN FONGA,
Deputy Clerk.

(Endorsed.)

I hereby certify that by virtue of the annexed writ of attachment I have, this 23rd day of February, 1884, attached the following-described real property, to wit:

That certain mine or mining claim known and designated as the Globe mine, situated, lying, and being about one mile northerly from the town of Globe, Gila county, A. T., and is recorded in Book 4, on pages 162 and 163, Globe district, Gila county, mining records, to which reference is hereby made for further description.

Also that certain mine or mining claim known and designated as the Globe Ledge, adjoining and being on the extension of the above-described Globe mine, and is recorded in Book 4, on pages 163, '4, '5, Gila, Globe district, and Gila county records, to which reference is hereby made for further description.

Also that certain mill site known and designated as the Red Jacket mill site (being the same upon which the Old Dominion Cop-
68 per Company's smelters now stand), together with all improvements, machinery, and appurtenances thereon or thereunto belonging. Said mill site is situated, lying, and being on the east bank of Pinal creek, about ¼ of a mile northerly from the northerly line of the town of Globe, Gila county, A. T., and is recorded in Book 1, on page 157, Gila county mining records, to which reference is hereby made for a further description.

Said attachment was served by delivering a true and correct copy of said writ to Capt. Thomas, who was then in charge of said property, and filing a true and correct copy of said writ with the county recorder of Gila county, A. T., with a copy of this return thereto annexed.

B. F. PASCOE, *Sheriff.*

69 In the District Court of the First Judicial District of the Territory of Arizona in and for the County of Cochise.

ADOLF LEDENBURG *et al.*
vs.
THE OLD DOMINION COPPER MINING COMPANY.

To Anderson, Fitzgerald and Anderson, attorneys for defendant:

Please take notice that the plaintiff in the above-entitled action will ask for an order of said court in open court, on the 14th day of May, 1888, at the opening of court on that day, or as soon thereafter as counsel can be heard, giving and granting leave to B. F. Pascoe, former sheriff of Gila county, Arizona, to file a supplemental or amended return to certain writs of attachment levied by him on the property of said defendant on the 23rd day of February, 1884, for the purpose of showing the hour of the day at which the said levy was made, a copy of which is hereto annexed.

(Signed) GEO. G. BERRY,
Attorney for Plaintiffs.

We have this day received service of the above notice and copy. May 4, 1888.

(Signed) ANDERSON, FITZGERALD & ANDERSON,
Attorneys for Defendant.

(Endorsed:) In district court, Territory of Arizona, county of Cochise. Adolph Ladenburg *et al. vs.* The Old Dominion Copper Mining Co. Notice of motion to amend sheriff's return. Geo. G. Berry, pl'ffs' att'y.

70 In the District Court of the First (Formerly the Second) Judicial District of the Territory of Arizona in and for the County of Cochise.

A. LADENBURG *et al.*, Plaintiffs,
vs.
THE OLD DOMINION COPPER MINING COMPANY, Defendant.

TERRITORY OF ARIZONA, *County of Cochise,* } *ss:*

B. F. Pascoe, being by me first duly sworn, upon his oath doth depose and say as follows: I am the duly qualified and acting sheriff of said county of Gila, Arizona, and was such *plaintiff* on the 23rd day of February, A. D. 1884, and all of the days herein mentioned; that during the winter of A. D. 1883 and 1884, including said February 23rd, 1884, the United States mail from Riverside, Florence, Casa Grande, Tucson, and Tombstone, Arizona, arrived in Globe City, the county-seat of said county of Gila, at about three (3) o'clock in the afternoon of each day, and on said 23rd day of February, A. D. 1884, I received, in my official capacity as such sheriff and by that day's mail, the writs of attachment and other process for service in the above-entitled cause, and immediately upon receipt of same and pursuant to instructions I duly served and executed said writs of attachment by attaching the Globe mine and smelters and improvements and other property belonging to said defendant in said county of Gila, particularly enumerated and described in my return to said writs of attachment, and at the same time I personally delivered to Mr. Thomas, the duly authorized agent of said defendant corporation, he being in possession of said property so attached by me, a true and correct copy of each of said writs of attachment and
71 a notice that said property was by me attached pursuant to said writs of attachment; that such levy under said writs of attachment and the service and execution of said writs of attachment and the delivery and service of such copies of the same and the notice of attachment to and on said agent, Thomas, were all made and done on said 23rd day of February, A. D. 1884, between the hours of three (3) and four (4) o'clock in the afternoon of that day, and I thereupon returned to Globe City, said county-seat, and delivered to the county recorder of said county of Gila

true and correct copies of each of said writs of attachment annexed to notices of attachment, particularly describing the said property attached thereunder, for filing as a county and public record, and the same were by said county recorder duly filed; that I delivered the same to him between the hours of three and four o'clock on said twenty-third (23rd) day of February, A. D. 1884, in the afternoon of said day, and instructed said recorder to file the same immediately. This affidavit is made by me auxiliary and supplemental to my return to said writs of attachment, that the court may be fully advised of the facts.

Further affiant saith not.

(Signed) B. F. PASCOE, *Sheriff.*

[NOTARIAL SEAL.] Subscribed and sworn to before me this 28th day of January, A. D. 1886.

(Signed) ALLEN R. ENGLISH, *Notary Public.*

72 TERRITORY OF ARIZONA, } *County of Cochise.* }

I hereby certify the annexed and foregoing to be a full, true, and correct copy of the writ of attachment and return of sheriff in the cause entitled "Adolf Ladenburg *et al. vs.* Old Dominion Copper M'g Co., reg. No. 876," on file in the clerk's office of the district court of the first judicial district of the Territory of Arizona in and for the county of Cochise.

[SEAL.] Witness my hand and the seal of said court this 11th day of April, A. D. 1888.

(Signed) GEO. H. DAILY, *Clerk.*

(Endorsed:) No. 876. District court, second judicial district, county of Cochise, Arizona Territory. Adolf Ladenburg *et al. vs.* Old Dominion Copper M'g Co. Writ of attachment. Copy. No. 302. District court, Gila county, Arizona. Wm. Keyser *vs.* Geo. E. Shute *et al.* Filed Oct. 16, 1888. B. G. Fox, clerk.

73 J 2.

Copy Writ of Attachment No. 377 *and Return and Amended Return.*

In the District Court of the Second Judicial District of the Territory of Arizona in and for the County of Cochise.

ADOLF LADENBURG *et al.*, Plaintiff-, *vs.* OLD DOMINION COPPER MINING COMPANY, Defendant. } Writ of Attachment.

The Territory of Arizona to the sheriff of the county of Gila, Greeting:

Whereas the above-entitled action was commenced in the district court of the second judicial district of the Territory of Arizona in

and for the county of Cochise by the plaintiff- in said action to recover from the defendant in said action the sum of seven thousand five hundred dollars, lawful money of the United States, besides interest at the rate of six per cent. per annum from the 13th day of September, 1883, and costs of suit, and the necessary affidavit and undertaking herein having been filed as required by law:

Now, we do therefore command you, the said sheriff, that you attach and safely keep all property of the said defendant within your said county not exempt from execution, or so much thereof as may be sufficient to satisfy the said plaintiffs' demand as above mentioned, unless said defendant give you security by an undertaking of at least two sufficient sureties in an amount sufficient to satisfy such demand, besides costs, or in an equal amount to the value of the property which has been or is about to be attached, in which case you will take such undertaking; and hereof make due and legal service and return.

74

Witness Hon. D. H. Pinney, judge of said district court [SEAL.] of the second judicial district, this 16th day of February, 1884.

Attest my hand and seal of said court this 16th day of February, 1884.

W. H. SEAMANS, *Clerk*,
By JOHN FONGA,
Deputy Clerk.

I hereby certify that by virtue of the annexed writ of attachment I have, this 23rd day of February, 1884, attached the following-described real property, to wit:

That certain mine or mining claim known and designated as the Globe mine, situated, lying, and being about one mile northerly from the town of Globe, Gila county, A. T., and is recorded in Book 4, on pages 162 and 163, Globe district, Gila county, mining records, to which reference is hereby made for further description.

Also that certain mine or mining claim known and designated as the Globe Ledge, adjoining and being on the extension of the above-described Globe mine, and is recorded in Book 4, on pages 163, '4, '5, Globe district and Gila county records, to which reference is hereby made for further description.

Also that certain mill site known and designated as the Red Jacket mill site (being the same upon which the Old Dominion Copper Mining Company's smelters now stand), together with all improvements, machinery, and appurtenances thereon or thereunto belonging. Said mill site is situated, lying, and being on the east bank of Pinal creek, about ¼ of a mile northerly from the northerly line of the town of Globe, Gila county, A. T., and is recorded in Book 1, on page 157, Gila county mining records, to which reference is hereby made for further description. Said attachment was served by delivering a true and correct copy of said writ to Capt. Thomas, who was in charge of said property, and filing

75

a true and correct copy of said writ with the county recorder of Gila county, A. T., with a copy of this return thereto annexed.

B. F. PASCOE, *Sheriff.*

76 In the District Court of the First Judicial District of the Territory of Arizona in and for the County of Cochise.

ADOLF LADENBURG *et al.*
vs.
THE OLD DOMINION COPPER MINING COMPANY.

To Anderson, Fitzgerald and Anderson, attorneys for defendant:

Please take notice that the plaintiffs in the above-entitled action will ask for an order of said court in open court, on the 14th day of May, 1888, at the opening of court on that day, or as soon thereafter as counsel can be heard, giving and granting leave to B. F. Pascoe, former sheriff of Gila county, Arizona, to file a supplemental or amended return to certain writs of attachment levied by him on the property of said defendant on the 23rd day of February, 1884, for the purpose of showing the hour of the day at which said levy was made, a copy of which is hereto annexed.

(Signed) GEO. G. BERRY,
Attorney for Plaintiffs.

We have this day received service of the above notice and copy. May 4, 1888.

ANDERSON, FITZGERALD & ANDERSON,
Attorneys for Defendant.

(Endorsed:) In district court, Territory of Arizona, county of Cochise. Adolf Ladenburg *et al. vs.* The Old Dominion Copper Mining Company. Notice of motion to amend sheriff's return. Geo. G. Berry, pl'ffs' att'y.

77 In the District Court of the First (Formerly the Second) Judicial District of the Territory of Arizona in and for the County of Cochise.

A. LADENBURG *et al.*, Plaintiffs,
vs.
THE OLD DOMINION COPPER MINING COMPANY, Defendant.

TERRITORY OF ARIZONA, *County of Cochise.* } *ss:*

B. F. Pascoe, being by me first duly sworn, upon his oath doth depose and say as follows: I am the duly qualified and acting sheriff of said county of Gila, Arizona, and was such sheriff on the 23rd day of February, A. D. 1884, and all of the days herein mentioned; that during the winter of A. D. 1884, including said February 23rd, 1884, the United States mail from Riverside, Florence, Casa Grande, Tucson, and Tombstone, Arizona, arrived in Globe

City, the county-seat of said county of Gila, at about three (3) o'clock in the afternoon of each day, and on said 23rd day of February, A. D. 1884, I received, in my official capacity as such sheriff and by that day's mail, the writs of attachment and other process for service in the above-entitled cause, and immediately upon receipt of same and pursuant to instructions I duly served and executed said writs of attachment by attaching the Globe mine and smelters and improvements and other property belonging to said defendant in said county of Gila, particularly enumerated and described in my return to said writs of attachment, and at the
78 same time I personally delivered to Mr. Thomas, the duly authorized agent of said defendant corporation, he being in possession of said property so attached by me, a true and correct copy of each of said writs of attachment and a notice that said property was by me attached pursuant to said wr*tis* of attachment; that such levy under said writs of attachment and the service and execution of said wr*tis* of attachment and the delivery and service of such copies of the same and the notice of attachment to and on said agent Thomas were all made and done on said 23rd day of February, A. D. 1884, between the hours of three (3) and (4) o'clock in the afternoon of that day, and I thereupon returned to Globe City, said county-seat, and delivered to the county recorder of said county of Gila true and correct copies of each of said writs of attachment annexed to notices of attachment, particularly describing the said property attached thereunder, for filing as a county and public record, and the same were by said county recorder duly filed; that I delivered the same to him, said recorder, between the hours of three and four o'clock on said twenty-third (23rd) day of February, A. D. 1884, in the afternoon of said day, and instructed said recorder to file same immediately. This affidavit is made by me auxiliary and supplemental to my return to said writs of attachment, that the court may be fully advised of the facts.

(Signed) B. F. PASCOE, *Sheriff.*

[NOTARIAL SEAL.] Subscribed and sworn to before me this 28th day of January, A. D. 188–.

(Signed) ALLEN R. ENGLISH,
Notary Public.

79 TERRITORY OF ARIZONA, }
County of Cochise. }

I hereby certify the annexed and foregoing to be a full, true, and correct copy of the writ of attachment and return of sheriff in the cause entitled "Adolf Ladenburg *et al. vs.* Old Dominion Copper M'g Co., reg. No. 877," on file in the clerk's office of the district court of the first judicial district of the Territory of Arizona in and for the county of Cochise.

[SEAL.] Witness my hand and the seal of said court this 11th day of April, A. D. 1888.

GEO. H. DAILY, *Clerk.*

(Endorsed:) No. 877. District court, second judicial district, county of Cochise, Arizona Territory. Adolf Ladenburg *et al.*, plaintiff-, *vs.* Old Dominion Copper M'g Co. Writ of attachment. Copy. No. 302. District court, Gila county, Arizona. Wm. Keyser *vs.* Geo. E. Shute *et al.* Filed Oct. 16, 1888. B. G. Fox, clerk.

80 J 3.

Copy Writ of Attachment No. 878, Return, and Amended Return.

In the District Court of the Second Judicial District of the Territory of Arizona in and for the County of Gila.

ADOLF LADENBURG *et al.*, Plaintiff-,
vs.
OLD DOMINION COPPER MINING COMPANY, Defendant. } Writ of Attachment.

The Territory of Arizona to the sheriff of the county of Gila, Greeting:

Whereas the above-entitled action was commenced in the district court of the second judicial district of the Territory of Arizona in and for the county of Cochise by the plaintiff- in said action to recover from the defendant in said action the sum of three thousand nine hundred and ninety dollars, lawful money of the United States, besides interest, at the rate of six per cent. per annum, from the 13th day of September, 1883, and costs of suit, and the necessary affidavit and undertaking herein having been filed as required by law:

Now, we do therefore command you, the said sheriff, that you attach and safely keep all property of the said defendant within your said county not exempt from execution, or so much thereof as may be sufficient to satisfy the said plaintiffs' demand as above mentioned, unless said defendant give you security by an undertaking of at least two sufficient sureties in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached, in which case you will take such undertaking; and hereof make due and legal service and return.

81

Witness Hon. D. H. Pinney, judge of said district court [SEAL.] of the second judicial district, this 16th day of February, 1884.

Attest my hand and seal of said court this 16th day of February, 1884.

W. H. SEAMANS, *Clerk*,
By JOHN FONGA,
Deputy Clerk.

I hereby certify that, by virtue of the annexed writ of attachment, I have this 23rd day of February, 1884, attached the following-described real property, to wit:

That certain mine or mining claim known and designated as the Globe mine, situated, lying, and being about one mile northerly from the town of Globe, Gila county, A. T., and is recorded in Book 4, on pages 162 and 163, Globe district, Gila county, mining records, to which reference is hereby made for further description.

Also that certain mine or mining claim known and designated as the Globe Ledge, adjoining and being on the extension of the above-described Globe mine, and is recorded in Book 4, on pages 163, '4, '5, Globe district and Gila county records, to which reference is hereby made for further description.

Also that certain mill site known and designated as the Red Jacket mill site (being the same upon which the Old Dominion Copper Mining Company's smelters now stand), together with all improvements, machinery, and appurtenances thereon or
82 thereunto belonging. Said mill site is situate, lying, and being on the east bank of Pinal creek, about ¼ of a mile northerly from the northerly line of the town of Globe, Gila county, A. T., and is recorded in Book 1, on page 157, Gila county mining records, to which reference is hereby made for further description. Said attachment was served by delivering a true and correct copy of said writ to Capt. Thomas, who was in charge of said property, and filing a true and correct copy of said writ with the county recorder of Gila county, A. T., with a copy of this return thereto annexed.

B. F. PASCOE, *Sheriff.*

In the District Court of the First Judicial District of the Territory of Arizona in and for the County of Cochise.

ADOLF LADENBURG *et al.*
vs.
THE OLD DOMINION COPPER MINING COMPANY.

To Anderson, Fitzgerald and Anderson, attorneys for defendant:

Please take notice that the plaintiff- in the above-entitled action will ask for an order of said court in open court on the 14th day of May, 1888, at the opening of court on that day, or as soon thereafter as counsel can be heard, giving and granting leave to B. F. Pascoe, former sheriff of Gila county, Arizona, to file a supplemental or amended return to certain writs of attachment levied by him on the property of said defendant on the 23rd day of February, 1884,
83 for the purpose of showing the hour of the day at which said levy was made, a copy of which is hereto annexed.

(Signed) GEO. G. BERRY,
Attorney for Plaintiffs.

We have this day received service of the above notice and copy. May 4, 1888.

(Signed) ANDERSON, FITZGERALD & ANDERSON,
Attorneys for Defendant.

(Endorsed:) In district court, Territory of Arizona, county of Cochise. Adolf Ladenburg *et al. vs.* The Old Dominion Copper Mining Co. Notice of motion to amend sheriff's return. Geo. G. Berry, pl'ffs' att'y.

In the District Court of the First (Formerly the Second) Judicial District of the Territory of Arizona in and for the County of Cochise.

A. LADENBURG *et al.*, Plaintiffs,
vs.
THE OLD DOMINION COPPER MINING COMPANY, Defendant.

TERRITORY OF ARIZONA, *County of Cochise*, } *ss:*

B. F. Pascoe, being by me first duly sworn, upon his oath doth depose and say as follows:

I am the duly qualified and acting sheriff of said county of Gila, Arizona, and was such sheriff on the 23rd day of February, A. D. 1884, and all of the days herein mentioned; that during the winter of A. D. 1883 and 1884, including said February 23rd, 1884,
84 the United States mail from Riverside, Florence, Casa Grande, Tucson, and Tombstone, Arizona, arrived in Globe City, the county-seat of said county of Gila, at about three (3) o'clock in the afternoon of each day, and on said 23rd day of February, A. D. 1884, I received in my official capacity as such sheriff and by that day's mail the writs of attachment and other process for service in the above-entitled cause, and immediately upon receipt of same and pursuant to instructions I duly served and executed said writs of attachment by attaching the Globe mine and smelters and improvements and other property belonging to said defendant in said county of Gila, particularly enumerated and described in my return to said writs of attachment, and at the same time I personally delivered to Mr. Thomas, the duly authorized agent of said defendant corporation, he being in possession of said property so attached by me, a true and correct copy of each of said writs of attachment; that such levy under said writs of attachment and the service and execution of said writs of attachment and the delivery and service of such copies of the same and the notice of attachment to and on said agent Thomas were all made and done on said 23rd day of February, A. D. 1884, between the hours of three (3) and four (4) o'clock in the afternoon of that day, and I thereupon returned to Globe City, said county-seat, and delivered to the county recorder of said county of Gila true and correct copies of each of said writs of attachment annexed to notices of attachment, particularly describing the said property attached thereunder, for filing as a county and public record, and the same were by said county recorder
85 duly filed; that I delivered the same to him, said recorder, between the hours of three and four o'clock on said twenty-third (23rd) day of February, A. D. 1884, in the afternoon of said day, and instructed said recorder to file the same immediately.

This affidavit is made by me auxiliary and supplemental to my return to said writs of attachment, that the court may be fully advised of the facts.

Further affiant saith not.

(Signed) B. F. PASCOE, *Sheriff.*

[NOTARIAL SEAL.] Subscribed and sworn to before me this 28th day of January, A. D. 1886.

(Signed) ALLEN R. ENGLISH,
Notary Public.

TERRITORY OF ARIZONA, }
County of Cochise. }

I hereby certify the annexed and foregoing to be a full, true, and correct copy of the writ of attachment and return of sheriff in the cause entitled "Adolf Ladenburg *et al. vs.* Old Dominion Copper M'g Co., reg. No. 878," on file in the clerk's office of the district court of the first judicial district of the Territory of Arizona in and for the county of Cochise.

[SEAL.] Witness my hand and the seal of said court this 11th day of April, A. D. 1888.

GEO. H. DAILY, *Clerk.*

(Endorsed:) No. 878. District court, second judicial district, county of Cochise, Arizona Territory. Adolf Ladenburg *et al.*, plaintiff-, *vs.* Old Dominion Copper M'g Co., defendant. Writ of attachment. Copy. No. 302. District court, Gila county, Arizona. Wm. Keyser *vs.* Geo. E. Shute *et al.* Filed Oct. 16, 1888. B. G. Fox, clerk.

86 K.

Minute Entry and Deposition of Peter B. Miller.

Defendants offer in evidence the deposition of Peter B. Miller.

Plaintiff objects to the reading of that deposition on the ground that the testimony contained in the deposition is an attempt to contradict an official act of the witness while recorder of Gila county, to wit, the noting upon the backs of the copies of the writs of attachment heretofore mentioned were filed with him by the sheriff of Gila county, Arizona. The deposition of Peter B. Miller was then read.

In the District Court of the Second Judicial District of the Territory of Arizona in and for the County of Gila.

WILLIAM KEYSER, Plaintiff,
vs.
GEO. E. SHUTE *et al.*, Defendants.

Stipulation to Take Deposition.

It is hereby stipulated that the deposition of P. B. Miller, a witness for defendants in the above-entitled action, may be taken before any notary public in the city and county of San Francisco, in the State of California, at such time and place as may suit the convenience of the said witness, so that the said deposition may be used on the trial of the above-entitled action in the said district court, at the October term thereof, 1888, and when so taken the said deposition may be used on the trial of the said action, subject to the same objection, except as to the form of interrogatories, as if the said
87 witness was there present personally and testifying therein.

(Signed) GEO. G. BERRY,
Attorney for Defendants.

Dated August 10, 1888.

(Signed) ANDERSON, FITZGERALD & ANDERSON, *Attorneys for Plaintiff.*

In the District Court of the Second Judicial District of the Territory of Arizona in and for the County of Gila.

WILLIAM KEYSER, Plaintiff,
vs.
GEO. E. SHUTE *et al.*, Defendants.

Be it remembered that, pursuant to the stipulation hereto annexed and on the 12th day of September, A. D. 1888, at 501 California street, in the city and county of San Francisco, State of California, before me, Chas. D. Wheat, a notary public in and for said city and county of San Francisco, duly appointed and commissioned to administer oaths, &c., personally appeared Peter B. Miller, witness produced on behalf of defendants in the above-entitled action, now pending in the said court, and who, being by me first duly sworn, did then and there testify in answer to the interrogatories hereto annexed as follows, to wit:

Defendants' Interrogatories.

1st. What is your name, age, and place of residence?

2nd. Where did you reside on the 23rd day of February, 1884, and what office, if any, did you fill?

3rd. If in answer to the last interrogatory you state that
88 at the date mentioned you resided at Globe, Gila county, Arizona, and that you was the county recorder of said Gila

county, state whether or not any writs of attachment were handed to you as such recorder on that day for record; and, if so, in favor of whom were they issued and against what persons and property were they directed?

4th. If in answer to the last interrogatory you state that three writs of attachment were handed to you for record, issued in the suits of Ladenburg, Thalmann & Co. against The Old Dominion Copper Mining Co., please state by whom they were handed to you and at what hour of the day you received them.

5th. If in answer to the last interrogatory you state that the writs of attachment were handed to you for record by the sheriff of Gila county, Joseph Pascoe, at about 4 o'clock in the afternoon of the said 23rd day of February, 1884, state whether or not you were in your office when you received them.

6th. At what hour in the day did you usually close your office for business, and at what time, if you remember, did you close on the said 23rd day of February, 1884?

7th. If in answer to the last interrogatory you say that you closed your office earlier than usual on the said 23rd day of February, 1884, state, if you remember, any reason why you did so on that day.

8th. Please state, if you remember, at what time you marked the notices of attachment handed you by Pascoe, sheriff, as filed in your office on that day.

9th. If in answer to the last interrogatory you say they
89 were marked "Filed at 6 o'clock p. m.," state, if you remember, how it was that the papers remained in your hands from about four o'clock p. m. until six o'clock before they were filed.

10th. State fully any matter within your knowledge relating to the reception and filing of the said writs of attachment which might be of advantage to the defendants' case as fully as though you had been especially interrogated concerning them.

Answer to interrogatory 1st. My name is Peter B. Miller; I am 43 years of age, and reside at present in San Francisco, California.

Answer to interrogatory 2nd. I reside in Globe, Gila county, Arizona Territory, and was county recorder of said Gila county at that time.

Answer to interrogatory 3rd. Yes; writs of attachment were handed to me at that time for record in favor of A. Ladenburg *et al.* and against the Old Dominion Copper Mining Company.

Answer to interrogatory 4th. The writs mentioned in my answer to interrogatory 3rd were handed to me by B. F. Pascoe, sheriff of said county, about the hour of 4 p. m. (I think) of that day, viz., February 23, 1884.

Answer to interrogatory 5th. I was not in my office at the time I received said writs.

90 Answer to interrogatory 6th. I usually closed my office for business at about 4 p. m. On the 23rd day of February, 1884, I closed earlier than usual, between 3 and 4 p. m.

Answer to interrogatory 7th. The day before being a holiday,

there was not much business doing, so I closed earlier than usual, to wit, between 3 and 4 p. m., on the 23rd day of February, 1884.

Answer to interrogatory 8th. I marked the writs mentioned in my answer to interrogatory 3rd as filed at 6 o'clock p. m., February 23, 1884.

Answer to interrogatory 9th. I was at my dinner when the sheriff gave me the papers, and I did not go down to my office until near 6 o'clock, and endorsed them at 6 o'clock as the actual time of filing the same.

Answer to interrogatory 10th. I know of nothing that would be of any advantage to either defendants or plaintiff other than as above set forth.

(Signed) P. B. MILLER.

STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

I, Chas. D. Wheat, a notary public, do hereby certify that the witness in the foregoing deposition named was by me duly sworn to testify to the truth, the whole truth, and nothing but the
91 truth; that said deposition was taken at the time and place mentioned in the caption to this deposition, to wit, at 501 California street, in the city and county of San Francisco, State of California, and on the 12th day of September, A. D. 1888, between the hours of 10 a. m. and 2 p. m. of that day; that said deposition was reduced to writing by me, and when completed was by me carefully read to said witness, and, being by him corrected, was by him subscribed in my presence.

In witness whereof I have hereunto subscribed
[NOTARIAL SEAL.] my name and affixed my official seal, at my office, in the city and county of San Francisco, this 12th day of September, A. D. 1888.

(Signed) CHAS. D. WHEAT,
Notary Public.

L.

Minute Entry and Copy of Writ of Attachment No. 877, Showing Recorder's Endorsement.

Defendant offers in evidence copy of writ of attachment No. 877, showing recorder's endorsement thereon. It was agreed by and between the parties hereto that a copy of one of the writs of attachment filed with the recorder by the sheriff, with the recorder's endorsement thereon as to the time of filing, and agree that the copies of the other two attachments filed in the recorder's office show precisely the same endorsements by the recorder.

92 In the District Court of the Second Judicial District of the Territory of Arizona in and for the County of Cochise.

ADOLF LADENBURG *et al.*, Plaintiffs,
vs.
THE OLD DOMINION COPPER MINING COMPANY, Defendant. } Writ of Attachment.

The Territory of Arizona to the sheriff of Gila county, Greeting:

Whereas the above-entitled action was commenced in the district court of the second judicial district of the Territory of Arizona in and for the county of Gila by the plaintiff- in said action to recover from the defendant in the said action the sum of seven thousand five hundred dollars, lawful money of the United States, besides interest, at the rate of six per cent. per annum, from the 13th day of September, 1883, and costs of suit, and the necessary affidavit and undertaking herein having been filed as required by law:

Now, we do therefore command you that you attach and safely keep all property of the said defendant within you- county not exempt from execution, or so much thereof as may be sufficient to satisfy the said plaintiffs' demand, as above mentioned, unless the said defendant give you security by an undertaking of at least two sufficient sureties in an amount sufficient to satisfy said demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached; in which case you will take such undertaking and hereof make due and legal service and return.

Witness Hon. D. H. Pinney, judge of said district court
[SEAL.] of the second judicial district, this 16th day of February, 1884.

Attest my hand and seal of said court the day and year last above written.

W. H. SEAMANS, *Clerk*,
By JOHN FONGA,
Deputy Clerk.

93 I hereby certify that by virtue of the annexed writ of attachment I have this 23rd day of February, 1884, attached the following-described real property, to wit: That certain mine or mining claim known and designated as the Globe mine, situated, lying, and being about one mile north of the town of Globe, Gila county, A. T., and recorded in Book 4, on pages 162, '3, Globe district and Gila mining records, to which reference is hereby made for a fuller description.

Also that certain mine or mining claim known and designated as the Globe Ledge, adjoining and being an extension of the above-described Globe mine, and is recorded in Book 4, on pages 163, '4, '5, Globe district and Gila county mining records, to which reference is hereby made for further description.

Also that certain mill site known and designated as the Red

there was not much business doing, so I closed earlier than usual, to wit, between 3 and 4 p. m., on the 23rd day of February, 1884.

Answer to interrogatory 8th. I marked the writs mentioned in my answer to interrogatory 3rd as filed at 6 o'clock p. m., February 23, 1884.

Answer to interrogatory 9th. I was at my dinner when the sheriff gave me the papers, and I did not go down to my office until near 6 o'clock, and endorsed them at 6 o'clock as the actual time of filing the same.

Answer to interrogatory 10th. I know of nothing that would be of any advantage to either defendants or plaintiff other than as above set forth.

(Signed) P. B. MILLER.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

I, Chas. D. Wheat, a notary public, do hereby certify that the witness in the foregoing deposition named was by me duly sworn to testify to the truth, the whole truth, and nothing but the
91 truth; that said deposition was taken at the time and place mentioned in the caption to this deposition, to wit, at 501 California street, in the city and county of San Francisco, State of California, and on the 12th day of September, A. D. 1888, between the hours of 10 a. m. and 2 p. m. of that day; that said deposition was reduced to writing by me, and when completed was by me carefully read to said witness, and, being by him corrected, was by him subscribed in my presence.

In witness whereof I have hereunto subscribed
[NOTARIAL SEAL.] my name and affixed my official seal, at my office, in the city and county of San Francisco, this 12th day of September, A. D. 1888.

(Signed) CHAS. D. WHEAT,
Notary Public.

L.

Minute Entry and Copy of Writ of Attachment No. 877, *Showing Recorder's Endorsement.*

Defendant offers in evidence copy of writ of attachment No. 877, showing recorder's endorsement thereon. It was agreed by and between the parties hereto that a copy of one of the writs of attachment filed with the recorder by the sheriff, with the recorder's endorsement thereon as to the time of filing, and agree that the copies of the other two attachments filed in the recorder's office show precisely the same endorsements by the recorder.

92 In the District Court of the Second Judicial District of the Territory of Arizona in and for the County of Cochise.

ADOLF LADENBURG *et al.*, Plaintiffs,
vs.
THE OLD DOMINION COPPER MINING COMPANY, Defendant. } Writ of Attachment.

The Territory of Arizona to the sheriff of Gila county, Greeting:

Whereas the above-entitled action was commenced in the district court of the second judicial district of the Territory of Arizona in and for the county of Gila by the plaintiff- in said action to recover from the defendant in the said action the sum of seven thousand five hundred dollars, lawful money of the United States, besides interest, at the rate of six per cent. per annum, from the 13th day of September, 1883, and costs of suit, and the necessary affidavit and undertaking herein having been filed as required by law:

Now, we do therefore command you that you attach and safely keep all property of the said defendant within you- county not exempt from execution, or so much thereof as may be sufficient to satisfy the said plaintiffs' demand, as above mentioned, unless the said defendant give you security by an undertaking of at least two sufficient sureties in an amount sufficient to satisfy said demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached; in which case you will take such undertaking and hereof make due and legal service and return.

Witness Hon. D. H. Pinney, judge of said district court
[SEAL.] of the second judicial district, this 16th day of February, 1884.

Attest my hand and seal of said court the day and year last above written.

W. H. SEAMANS, *Clerk*,
By JOHN FONGA,
Deputy Clerk.

93 I hereby certify that by virtue of the annexed writ of attachment I have this 23rd day of February, 1884, attached the following-described real property, to wit: That certain mine or mining claim known and designated as the Globe mine, situated, lying, and being about one mile north of the town of Globe, Gila county, A. T., and recorded in Book 4, on pages 162, '3, Globe district and Gila mining records, to which reference is hereby made for a fuller description.

Also that certain mine or mining claim known and designated as the Globe Ledge, adjoining and being an extension of the above-described Globe mine, and is recorded in Book 4, on pages 163, '4, '5, Globe district and Gila county mining records, to which reference is hereby made for further description.

Also that certain mill site known and designated as the Red

Jacket mill site (being the same upon which the Old Dominion Copper M. Co.'s smelters now stand), together with all improvements and machinery and appurtenances thereon or thereunto belonging. Said mill site is situated, lying, and being on the east bank of Pinal creek, about one-quarter of a mile northerly from the northerly line of the town of Globe, Gila county, A. T., and is recorded in Book 1, on page 157, Gila county mining records, to which reference is hereby made for further description. Said attachment was served by delivering a true and correct copy of said writ to Capt. Thomas, who was in charge of said property, and filing with the county recorder of Gila county a true and correct copy of said writ, with copy of this return annexed thereto.

B. F. PASCOE, *Sheriff.*

This 23rd day of February, 1884.

94 (Endorsed:) No. 877. District court of the second judicial district of the Territory of Arizona. Adolf Ladenburg *et al.*, plaintiffs, *vs.* Old Dominion Copper Mining Co., defendant. Copy writ of attachment. Filed February 23, 1884, at 6 p. m., at request of B. F. Pascoe. P. B. Miller, recorder.

TERRITORY OF ARIZONA, }
County of Gila, } *ss:*

I, C. T. Martin, county recorder in and for said county, Territory aforesaid, do hereby certify that the above and foregoing is a full, true, and correct copy of a writ of attachment and sheriff's return, Adolf Ladenburg *et al. vs.* Old Dominion Copper Mining Company, as the same appears of record in the files of my office.

Given under my hand and official seal this 24th day of December, 1887.

[RECORDER'S SEAL.] CHAS. T. MARTIN, *Recorder.*

(Endorsed:) No. 302. District court, Gila county, Arizona. Wm. Keyser *vs.* Geo. E. Shute *et al.* Filed October 16, 1888. B. G. Fox, clerk.

(Endorsed:) No. 302. In the district court of the second judicial district of Arizona Territory in and for Gila county. William Keyser, plaintiff, *vs.* Geo. E. Shute *et al.*, defendants. Complaint. Filed March 3rd, at 11 o'clock a. m., 1888. B. G. Fox, clerk.

95 M.

Minute Entry and Copy of Deed — Wm. Keyser to Old Dominion Copper Co.

Defendants offer in evidence a copy of a deed from Wm. Keyser to the Old Dominion Copper Company, dated January 10, 1888, conveying property involved in this *writ.*

Plaintiff objects to the introduction of the said copy of the deed because there is no acknowledgment before a proper officer and

because there was no such corporation known to the laws of the Territory of Arizona at the time of the execution of said deed.

This indenture made the 10th day of January, in the year of our Lord one thousand eight hundred and eighty-eight, between William Keyser, of Baltimore city, State of Maryland, the party of the first part, and the Old Dominion Copper Company, of Baltimore city, a corporation organized and existing under and by virtue of the laws of the State of Maryland, the party of the second part, witnesseth:

That the said party of the first part for and in consideration of four hundred thousand ($400,000.00) dollars, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release and forever quitclaim unto the said party of the second part and to its heirs and assigns all his (the said party of the first part) right, title, interest and estate in and to all the following-described premises, situate, lying and being in the county of Gila, Arizona Territory, viz:

First. The Globe mine, patented by the United States Government to W. B. Reagan on the 18th day of October, 1881, by patent
96 recorded in the office of the recorder of Pinal county, Territory of Arizona, on the 19th day of November 1881 to which record reference is made for a fuller description of said mine.

Second. The Globe Ledge mine, patented by the United States Government to Benjamin W. Reagan, on the 18th day of October, 1881, by patent recorded in the office of the recorder of Pinal county, Territory of Arizona, on the 19th day of November 1881, to which record reference is made for a fuller description of said mine.

Third. The Copper Jack mill site, of which the location notice is recorded in the office of the recorder of Gila county, Arizona, in Book 2 of Records of Mines, at page 311, and to which record reference is hereby made for a fuller description of said mill site and upon which the smelting works formerly owned by the Old Dominion Copper Mining Company are situated.

Fourth. The Globe mill site, of which the location notice is recorded in the office of the recorder of Gila county, Arizona, in Book 2 of Records of Mines, at page 311, to which record reference is hereby made for a fuller description of said mill site.

Fifth. The Globe Ledge mill site, of which the location notice is recorded in the office of the recorder of Gila county, Arizona, in Book 2, of Records of Mines, at page 310, to which record reference is hereby made for a fuller description of said mill site.

Sixth. The Southeast Globe mine of which the location no-
97 tice is recorded in the office of the recorder of Gila county, in Book 2, of Records of Mines, at page 312, and which reference is hereby made to said records for a fuller description of said mine.

Seventh. All of that certain mining claim known as the Interloper, in Globe district, county of Gila, Territory of Arizona, and recorded in Globe district records, on pages 116 and 117, in Book 3, reference to which will more fully show, being the same property

conveyed to the said party of the first part by Thomas H. Mason by deed bearing date January 3, 1887, and recorded at page 568, Book 2, Records of Deeds to Mines, Gila county, Arizona.

Together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining. To have and to hold, all and singular the said premises, together with all the appurtenances and privileges thereto incident unto the said party of the second part, its successors and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

WM. KEYSER. [SEAL.]

Signed, sealed, and delivered in the presence of—
JOS. CLENDENNIN, JR.

STATE OF MARYLAND, *City of Baltimore,* } *ss:*

On this 10th day of January, A. D. 1888, personally appeared before me, the judge of the criminal court of Baltimore, William Keyser, known to me to be the person described in and who
98 executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

[Seal Criminal Court.]

CHARLES E. PHELPS,
Judge of the Criminal Court of Baltimore.

Recorded at request of A. L. Walker at 30 minutes past 10 o'clock a. m., January 20, 1888.

CHAS. T. MARTIN, *Recorder.*

TERRITORY OF ARIZONA, *County of Gila,* } *ss:*

I, C. T. Martin, county recorder in and for said county, Territory aforesaid, do hereby certify that the above and foregoing is a full, true, and correct copy of a deed from William Keyser to the Old Dominion Copper Co. as the same appears of record in my office in Book 2 of Mine *Mine* Deeds, at pages 627–'9.

Given under my hand and official seal this 16th day of October, 1888.

CHAS. T. MARTIN, *Recorder.*

(Endorsed:) Deed, William Keyser to the Old Dom. C. Co., dated January 10, 1888. No. 302. District court, Gila county, Arizona. Wm. Keyser *vs.* Geo. E. Shute *et al.* Filed Oct. 16, 1888. B. G. Fox, clerk.

99 N.

Minute Entry and Copy Articles of Incorporation Old Dominion Copper Company.

Defendants offer in evidence certified copies of articles of incorporation of the Old Dominion Copper Company.

Plaintiff objects to the introduction of what purports to be copies of the articles of incorporation as not being properly certified for filing in accordance with the laws of Arizona; for the further reason that when offered in support of the deed in question it is shown that it was filed on the 20th day of January, 1888, ten days after said deed purports to have been made and acknowledged.

Old Dominion Copper Co. of Baltimore City.

Know all men by these presents that we, William F. Frick, John S. Gilman, George A. Pope, R. Brent Keyser, Joseph Clendenin, Jr., Frank E. Simpson, and William Butler, being citizens of the United States, and a majority of whom are citizens of the State of Maryland, do hereby certify that we do, under and by virtue of the general laws of the State authorizing the formation of corporations, hereby form a corporation under the name of the Old Dominion Copper Company of Baltimore City.

2. We do further certify that the said corporation so formed is a corporation for conducting any kind of mining business in this State and for selling or otherwise disposing of the products of said business, and also washing, dressing, smelting, and otherwise preparing for and bringing to market and selling the ores of all
100 kinds of metals; that the term of existence of the said corporation is limited to forty years, and that the said corporation is formed upon the articles, conditions, and provisions herein expressed and subject in all particulars to the limitations relating to corporations which are contained in the general laws of this State.

3. We do further certify that the general operations of this said corporation are to be carried on in the State of Maryland, and that the principal office of the said corporation will be located in Baltimore city.

4. We do further certify that the aggregate of the capital stock of said corporation is five hundred thousand dollars, and that the said capital is divided into twenty-five thousand shares of the par value of twenty dollars each.

5. We do further certify that the said corporation will be managed by five directors, and that William F. Frick, John S. Gilman, R. Brent Keyser, Frank E. Simpson, and William Butler are the names of the directors who will manage the concerns of the said corporation for the first year.

In witness whereof we have hereunto set our hands and seals

this first day of December, in the year eighteen hundred and eighty-seven.

WM. F. FRICK. [SEAL.]
JOHN S. GILMAN. [SEAL.]
GEO. A. POPE. [SEAL.]
FRANK E. SIMPSON. [SEAL.]
R. BRENT KEYSER. [SEAL.]
JOSEPH CLENDENIN, JR. [SEAL.]

Witness:
JOHN MADDOX,
As to Wm. F. Frick, John S. Gilman, George A. Pope, Frank E. Simpson, R. Brent Keyser, and Joseph Clendenin, Jr.

WM. BUTLER. [SEAL.]

Witness:
CHAS. H. ADAMS,
As to William Butler.

101 STATE OF MARYLAND, *Baltimore City*, } *To wit:*

Before the subscriber, a justice of the peace of the State of Maryland in and for the city of Baltimore, personally appeared on this first day of December, eighteen hundred and eighty-seven, Wm. F. Frick, John S. Gilman, George A. Pope, Frank E. Simpson, R. Brent Keyser, and Joseph Clendenin, Jr., and did severally acknowledge the foregoing certificate to be their act and deed.

JNO. T. MADDOX, *J. P.*

STATE OF MASSACHUSETTS, *County of Suffolk*, } *ss:*

Before me, Charles Hall Adams, a commissioner of the State of Maryland, residing in the city of ——, State of Massachusetts, on this sixth day of December, A. D. 1887, personally appeared William Butler and acknowledged the foregoing certificate to be his act and deed.

Seal Chas. Hall Adams, Commissioner, Boston, Mass.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, No. 5 Court St., in the city of Boston, in the county of Suffolk and State of Massachusetts, this sixth day of December, A. D. eighteen hundred and eighty-seven.

CHAS. HALL ADAMS,
Commissioner of the State of Maryland.

I, William A. Stewart, one of the judges of the supreme bench of Baltimore city, do hereby certify that the foregoing certificate has been submitted to me for my examination, and I do further certify

that the said certificate is in conformity with the provisions of the law authorizing the formation of corporations.

WILLIAM A. STEWART.

102 I hereby certify that the foregoing is a true copy taken from the original, filed for record Dec. 27th, 1887, at 10 o'clock a. m.

In testimony whereof I hereunto set my hand and affix the seal of the superior court of Baltimore city this 9th day of January, A. D. 1888.

[Superior Court Seal.]

JAS. BOND, *Clerk.*

(Endorsed:) "Filed at request of A. L. Walker at 30 minutes past 10 o'cl'k a. m. Jan'y 20, 1888, with the records of Gila county, Arizona Ter. Chas. T. Martin, recorder."

TERRITORY OF ARIZONA, } *ss:*
County of Gila, }

I, C. T. Martin, county recorder in and for said county, Territory aforesaid, do hereby certify that the above and foregoing is a full, true, and correct copy of the articles of incorporation of the Old Dominion Copper Co. as the same appears of record in the files of my office.

Given under my hand and official seal this 16th day of October, 1888.

[RECORDER'S SEAL.] CHAS. T. MARTIN, *Recorder.*

(Endorsed:) Certificate of incorporation the Old. Dom. Copper Co. No. 302. District court, Gila county, Arizona. Wm. Keyser *vs.* Geo. E. Shute *et al.* Filed Oct. 16, 1888. B. G. Fox, clerk.

103 O.

Minute Entry and Appointment of Agent Old Dominion Copper Co.

Defendants offer in evidence a copy of appointment of A. L. Walker as agent of the Old Dominion Copper Company in Arizona. Plaintiff objects on the grounds—

1st. Because at the date of said appointment there was no such corporation known to the laws of the Territory of Arizona as the Old Dominion Copper Company.

2nd. Because there is no such authentication of what purports to be an appointment of an agent as is required by the laws of the Territory of Arizona.

BALTIMORE, *January 7th,* 1888.

On motion of Mr. F. E. Simpson, Mr. A. L. Walker, of Gila county, Arizona, was appointed superintendent of the company's works at Globe, and also authorized to act for the company and in

its name and on its behalf, as agent, to receive all legal processes, etc., in accordance with the laws of the Territory of Arizona.

[CORPORATE SEAL.] THE OLD DOMINION COPPER CO.
OF BALTIMORE CITY,
By JOS. CLENDENIN, JR., *Secretary.*

(Endorsed:) "Filed at request of A. L. Walker at 30 min. past *past* 10 o'c'k a. m. Jan'y 20, 1888, with the records of Gila county, Arizona Ter. Chas. T. Martin, recorder."

104 TERRITORY OF ARIZONA, } ss:
County of Gila, }

I, C. T. Martin, county recorder in and for Gila county, Territory aforesaid, do hereby certify that the above and foregoing is a full, true, and correct copy of the appointment of agent of the Old Dominion Copper Co. as the same appears of record in the files of my office.

Given under my hand and official seal this 16th day of October, 1888.

CHAS. T. MARTIN, *Recorder.*

(Endorsed:) Appointment of agent of the Old Dom. Copper Co. No. 302. District court, Gila county, Arizona. Wm. Keyser *vs.* Geo. E. Shute *et al.* Filed Oct. 16, 1888. B. G. Fox, clerk.

P.

Minute Entry and Testimony of A. L. Walker.

A. L. Walker sworn as a witness on behalf of defendants.

Defendants now offer to prove by A. L. Walker, superintendent of the Old Dominion Copper Company in Arizona, that he is the person who handed to the county recorder of Gila county for record a deed from Wm. Keyser to the Old Dominion Copper Company; that he knows the signiture of Wm. Keyser, and that his true signiture was attached to the same.

Plaintiff objects to the introduction of the testimony as the instrument, the signiture of which is attempted to be proved,
105 is not before the court, and because this is not the mode of proving deeds known to the laws of the Territory of Arizona.

Mr. A. L. Walker then testified.

Q.

Minute Entry Offering Second Deed, etc., in Evidence.

Defendants offer in evidence 2nd deed from Wm. Keyser to the Old Dominion Copper Company, dated June 22, 1888, conveying the same property mentioned in a former deed to the Old Dominion Copper Company.

Defendants also offer in evidence certified copies of articles of incorporation of the Old Dominion Copper Company, being the same in all respects as the former copy offered in evidence, except the due authentication of this copy now offered, which did not appear on the former. This copy was filed for record in the county recorder's office of Gila county June 4, 1888.

Defendants offer in evidence the appointment of A. L. Walker as agent of the Old Dominion Copper Company in Arizona, dated on the 5th day of May and filed June 4, 1888.

This indenture made the 27th day of June, in the year of our Lord one thousand eight hundred and eighty-eight, between Wm. Keyser, of Baltimore city, the party of the first part, and the Old Dominion Copper Company of Baltimore City, State of Maryland, a corporation organized and existing under and by virtue of the laws of the State of Maryland, the party of the second part, wit-
106 nesseth that the said party of the first part, for and in consideration of four hundred thousand dollars ($400,000.00) *that* receipt whereof is hereby acknowledged, has granted, bargained, sold, released and forever quitclaimed, and by these premises does grant, bargain, sell, remise, release and forever quitclaim unto the said party of the second part, and to its successors and assigns, all his, the said party of the first part, right, title, interest and estate in the following-described premises situate, lying and being in the county of Gila, Arizona Territory, viz:

First. The Globe mine, patented by the United States Government to B. W. Reagan on the 18th day of October, 1881, by patent recorded in the office of the recorder of Pinal county, Territory of Arizona, on the 19th day of November, 1881, to which record reference is made for a fuller description of said mine.

Second. The Globe Ledge mine, patented by the United States Government to Benjamin W. Reagan on the eighteenth day of October, 1881, by patent recorded in the office of the recorder of Pinal county, Territory of Arizona, on the nineteenth day of November, 1881, to which record reference is made for a fuller description of said mine.

Third. The Copper Jack mill site, of which the location notice is recorded in the office of the recorder of Gila county, Arizona, in Book 2 of records of mines, at page 311, and to which record reference is hereby made for a fuller description of said mill site, and upon which the smelting works formerly owned by the Old Dominion Copper Mining Co. are situated.

107 Fourth. The Globe mill site, of which the location notice is recorded in the office of the recorder of Gila county, Arizona, in Book 2 of records of mines at page 311, to which record reference is hereby made for a fuller description of said mill site.

Fifth. The Globe Ledge mill site, of which the location notice is recorded in the office of the recorder of Gila county, Arizona, in Book 2, of records of mines, at page 310, to which record reference is hereby made for a fuller description of said mill site.

Sixth. The Southeast Globe mine, of which the location notice is

recorded in the office of the recorder of Gila county, Arizona, in Book 2 of records of mines, at page 312, and reference is hereby made to said records for a fuller description of said mine.

Seventh. All of that certain mining claim known as the Interloper, in Globe district, county of Gila, Territory of Arizona, and recorded in Globe district records on pages 116 and 117, in Book 3, reference to which will more fully show, being the same property conveyed to the party of the first part by Thomas H. Mason, by deed bearing date January 3d, 1887, and recorded at page 568, Book 2, records of deeds to mines, Gila county, Arizona Territory. Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining. To have and to hold, all and singular the said premises together with the appurtenances and privileges thereto incident, unto the said party of the second part, its successors and assigns forever.

108 In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

WM. KEYSER. [SEAL.]

BALTIMORE CITY, }
State of Maryland. }

Before me, a notary public, on this 27th day of June, 1888, personally appeared William Keyser, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 27th day of June, A. D. 1888.

[NOTARY'S SEAL.] MURRY HANSON,
Notary Public.

Filed and recorded, at request of A. L. Walker, at 9 o'clock a. m., July 5, 1888.

CHAS. T. MARTIN, *Recorder.*

Book 3 of Deeds to Mines, pages 14, 15, and 16.

TERRITORY OF ARIZONA, }
County of Gila, } *ss:*

I, Chas. T. Martin, county recorder in and for said Gila county and custodian of the records thereof, do hereby certify that the above and foregoing is a full, true, and correct copy of a deed from Wm. Keyser to the Old Dominion Copper Company of Baltimore City as the same appears of record in my office in Book 3 of Deeds to Mines, at pages 14, 15, and 16, and that I have compared the same.

Given under my hand and seal of office this 14th day of May, A. D. 1889.

[RECORDER'S SEAL.] CHAS. T. MARTIN,
County Recorder, Gila Co., A. T.

109 (Endorsed:) No. 302. District court, Gila county, Arizona Territory. William Keyser, plaintiff, *vs.* Geo. E. Shute *et al.*, defendants. Copy of deed, Keyser to O. D. C. Co. Filed May 14th, 1889. B. G. Fox, clerk.

R.

Copy Articles of Incorporation O. D. C. Co.

Old Dominion Copper Co. of Baltimore City.

Know all men by these presents that we, William F. Frick, John S. Gilman, George A. Pope, R. Brent Keyser, and Joseph Clendenin, Jr., Frank E. Simpson, and William Butler, being citizens of the United States, and a majority of whom are citizens of the State of Maryland, do hereby certify that we do, under and by virtue of the general laws of the State authorizing the formation of corporations, hereby form a corporation under the name of the Old Dominion Copper Company of Baltimore City.

2. We do further certify that the said corporation so formed is a corporation for conducting any kind of mining business in this State and for selling or otherwise disposing of the products of said business, and also washing, dressing, smelting, and otherwise preparing for and bringing to market and selling the ores of all kinds of metals; that the term of existence of the said corporation is limited to forty years, and that the said corporation is formed upon the articles, conditions, and provisions herein expressed and
110 subject in all particulars to the limitations relating to corporations which are contained in the general laws of this State.

3. We do further certify that the general operations of the said corporation are to be carried on in the State of Maryland, and that the principal office of the said corporation will be located in Baltimore city.

4. We do further certify that the aggregate of the capital stock of said corporation is five hundred thousand dollars, and that the said capital is divided into twenty-five thousand shares of the par value of twenty dollars each.

5. We do further certify that the said corporation will be managed by five directors, and that William F. Frick, John S. Gilman, R. Brent Keyser, Frank E. Simpson, and William Butler are the names of the directors who will manage the concerns of the said corporation for the first year.

In witness whereof we have hereunto set our hands and seals this

first day of December, in the year eighteen hundred and eighty-seven.

WM. F. FRICK. [SEAL.]
JOHN S. GILMAN. [SEAL.]
GEO. A. POPE. [SEAL.]
FRANK E. SIMPSON. [SEAL.]
R. BRENT KEYSER. [SEAL.]
JOSEPH CLENDENIN, JR. [SEAL.]

Witness:
JOHN T. MADDOX,
As to John S. Gilman, George A. Pope, Frank E. Simpson, R. Brent Keyser, and Joseph Clendenin, Jr.

WM. BUTLER. [SEAL.]

Witness:
CHAS. H. ADAMS,
As to William Butler.

STATE OF MARYLAND, *Baltimore City,* } *To wit:*

Before the subscriber, a justice of the peace of the State of Maryland in and for the city of Baltimore, personally appeared on this first day of December, eighteen hundred and eighty-seven,
111 Wm. F. Frick, John S. Gilman, George A. Pope, Frank E. Simpson, R. Brent Keyser, and Joseph Clendenin, Jr., and did severally acknowledge the foregoing certificate to be their act and deed.

JNO. T. MADDOX, *J. P.*

STATE OF MASSACHUSETTS, *County of Suffolk,* } *ss:*

Before me, Charles Hall Adams, a commissioner of the State of Maryland, residing in the city of Boston and State of Massachusetts, on this sixth day of December, A. D. 1887, personally appeared William Butler and acknowledged the foregoing certificate to be his act and deed.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, No. 5 Court St., in the city of Boston, in the county of Suffolk and State of Massachusetts, this sixth day of December, A. D. eighteen hundred and eighty-seven.

Seal Chas. Hall Adams, Commissioner, Boston, Mass.

CHAS. HALL ADAMS,
Commissioner of the State of Maryland.

I, William A. Stewart, one of the judges of the supreme bench of Baltimore city, do hereby certify that the foregoing certificate has been submitted to me for my examination; and I do further certify that the said certificate is in conformity with the provisions of the law authorizing the formation of said corporations.

WILLIAM A. STEWART.

Filed for record Dec. 27, 1887, at 10 o'cl'k a. m.; same day recorded and examined.

Per JAS. BOND, *Clerk.*

I hereby certify that the foregoing is a true copy taken
112 from Liber J. B. No. 26, fol. 72, etc., one of the charter records of Baltimore city, which are in the keeping and custody of the clerk of the superior court of Baltimore city.

In testimony whereof I have hereunto set my
Superior Court Seal. hand and affixed the seal of the superior court of Baltimore city on this 30th day of April, A. D. 1888.

JAS. BOND,
Clerk of the Superior Court of Baltimore City.

STATE OF MARYLAND, }
City of Baltimore. }

I, Geo. Wm. Brown, chief judge of the supreme banch of Baltimore city, assigned to and presiding in the superior court of Baltimore city, in the eighth judicial circuit of said State, do certify that the foregoing attestation of James Bond, clerk of the superior court of Baltimore city, is in due form and by the proper officer.

Given under my hand, at the city of Baltimore, this 30th day of April, in the year one thousand eight hundred and eighty-eight.

GEO. WM. BROWN.

STATE OF MARYLAND, }
City of Baltimore, } *ss:*

I, James Bond, clerk of the superior court of Baltimore city, do hereby certify that the Hon. Geo. Wm. Brown, who has certified and signed the above attestation, was at the time of so doing presiding judge of the superior court of Baltimore city, in the eighth judicial circuit of the State of Maryland, duly commissioned and qualified, and that to all acts done by him in that capacity full faith and credit are due and ought to be given, and that his signature thereto is genuine.

In testimony whereof I subscribe my name and
Superior Court Seal. affix the seal of the superior court of Baltimore city on this thirtieth day of April, A. D. 1888.

JAS. BOND,
Clerk of the Superior —.

113 TERRITORY OF ARIZONA, }
Office of Secretary, } *ss:*

I, Jas. A. Bayard, secretary of the Territory of Arizona, do hereby certify that the above and foregoing is a true and correct copy of the original articles of incorporation of the Old Dominion Copper Company of Baltimore City, now on file in my office.

In witness whereof I have hereunto set my
[SECRETARY'S SEAL.] hand and affixed my official seal.
Done at Prescott this 28th day of May, 1888.
JAS. A. BAYARD,
Secretary of the Territory.

(Endorsed:) Filed, at the request of Arthur L. Walker, at 9 o'clock a. m. June 4th, 1888, with the records of Gila county, Arizona Territory. (Recorder's seal.) Chas. T. Martin, recorder.

TERRITORY OF ARIZONA, } *ss:*
County of Gila, }

I, Chas. T. Martin, county recorder in and for said Gila county and custodian of the records of said county, do hereby certify that I have compared the above and foregoing with the original articles of incorporation of the Old Dominion Copper Company of Baltimore City, now on file in my office, and that the same is a full, true, and correct copy of the same and of the whole thereof.

Given under my hand and seal of office this
[RECORDER'S SEAL.] 13th day of May, A. D. 1889.
CHAS. T. MARTIN,
County Recorder, Gila Co., A. T.

(Endorsed:) No. 302. District court, Gila county, Arizona Territory. Wm. Keyser, plaintiff, *vs.* Geo. E. Shute *et al.*, defendants. Copy of articles of incorporation of the O. D. C. Co. Filed May 14, 1889. B. G. Fox, clerk.

114 S.

Copy of Appointment of Agent O. D. C. Co.

I hereby certify that at a meeting of the board of directors of the Old Dominion Copper Company of Baltimore City held on the fifth day of May, 1888, at which a quorum was present, the following resolution was unanimously adopted: "Resolved, That Mr. Arthur L. Walker, of Globe, Gila county, Arizona, is hereby appointed agent of the Old Dominion Copper Company of Baltimore City, with authority to receive all legal notices and transact all legal business for and on behalf of the company and in its name in accordance with the statute of Arizona made and provided in regard to the appointment of agents for a foreign corporation;" and I further certify that the above is a true copy of the resolution passed as aforesaid.

[CORPORATE SEAL.] In witness whereof I hereby affix the seal of said company.
JOSEPH CLENDENIN, JR., *Secretary.*

STATE OF MARYLAND, } ss:
City of Baltimore, }

I, William H. Masson, a notary public of the State of Maryland, residing in the city of Baltimore, do hereby certify that on the day of the date hereof before me personally appeared Joseph Clendenin, Jr., the secretary of the Old Dominion Copper Co. of Baltimore City, known to me to be the secretary of said company, and made oath in due form of law that he is the secretary of said company, keeper of its books and minutes and keeper of its seal, and that the seal hereon impressed is the seal of the corporation, and that the foregoing resolution is a true copy of the one passed by the board of directors.

115

JOSEPH CLENDENIN, JR.

Sworn and subscribed before me this 5th day of May, 1888.

[NOTARY SEAL.] WM. H. MASSON,
Notary Public.

TERRITORY OF ARIZONA, } ss:
Office of Secretary, }

I, Jas. A. Bayard, secretary of the Territory of Arizona, do hereby certify that the above and foregoing is a true and correct copy of the original appointment of Arthur L. Walker as agent of the Old Dominion Copper Company of Baltimore City, now in file in my office.

In witness whereof I have hereunto set my hand and affixed my official seal. Done at Prescott this 28th day of May, 1888.

[SECRETARY'S SEAL.]

JAS. A. BAYARD,
Secretary of Territory.

(Endorsed:) Filed at request of Arthur L. Walker, at 9 o'clock a. m., June 4th, 1888, with the records of Gila county, Arizona Ter. (Recorder's seal.) Chas. T. Martin, recorder.

TERRITORY OF ARIZONA, } ss:
County of Gila, }

I, Chas. T. Martin, county recorder in and for said Gila county and custodian of the records of said Gila county, do hereby certify that I have compared the above and foregoing with the original appointment of Arthur L. Walker as agent of the Old Dominion Copper Company of Baltimore City, now on file in my office, and that the same is a full, true, and correct copy of the said appointment and of the whole thereof.

Given under my hand and seal of office this 13th day of May, A. D. 1889.

CHAS. T. MARTIN,

[RECORDER'S SEAL.] *County Recorder, Gila Co., A. T.*

116 (Endorsed :) No. 302. District court, Gila county, Arizona Territory. William Keyser, plaintiff, *vs.* Geo. E. Shute *et al.*, defendants. Copy of appointment of agent. Filed May 14, 1889. B. G. Fox, clerk.

T.

Minute Entry and Deposition of Alex. P. Thomas.

Plaintiff offers in evidence deposition of Alexander P. Thomas and deposition of Geo. E. White.

Defendants object to witness, Geo. E. White, answering the interrogatory No. 8, as to what Mr. Pascoe stated to him, as Mr. Pascoe is not a party in interest, and, further, that it is an attempt to impeach a record by the purported statements of the party who made it.

In the District Court of the Second Judicial District of the Territory of Arizona in and for the County of Gila.

WILLIAM KEYSER, Plaintiff,
vs.
GEO. E. SHUTE, ADOLF LADENBURG, ERNST THALMANN, and ABRAHAM LIMBURGER, Defendants.

Deposition of Alexander P. Thomas, a witness sworn and examined under and by virtue of a stipulation, hereto annexed, in a certain cause pending and at issue in the district court of the second judicial district of the Territory of Arizona in and for the county of Gila, between William Keyser, plaintiff, and Geo. E. Shute,
117 Adolf Ladenburg, Ernst Thalmann, and Abraham Limburger, defendants, on the part of either of said parties.

The said ALEXANDER P. THOMAS, being duly sworn to speak the truth, the whole truth, and nothing but the truth, deposeth and says as follows :

Int. 1. State your name, age, and place of residence.

Answer. My name is Alexander P. Thomas ; age, 55 years ; present residence, Eagle River, Michigan.

Int. 2. Where did you reside on the 23rd of February, 1884?

Answer. Globe, Gila county, Arizona.

Int. 3. If in reply to the last interrogatory you state that you resided in Globe, Arizona Territory, state what your occupation or employment then was.

Answer. I was superintendent of the Old Dominion Copper Mining Company.

Int. 4. If in answer to your last interrogatory you say that you were superintendent or agent for the Old Dominion Copper Mining Company, state, if you remember, whether on the 24th day of February, 1884, Mr. Pascoe, sheriff of Gila county, Arizona, delivered to you as such superintendent or agent copies of three attachments issued in three suits then pending in Tombstone, Arizona, brought

by A. Ladenburg *et al. vs.* The Old Dominion Copper Mining Company.

Answer. On the 24th day of February, 1884, Mr. Pascoe, sheriff of Gila county, Arizona, delivered to me as such superintendent or agent copies of three attachments issued in three suits then pending in Tombstone, Arizona, brought by A. Ladenburg *et al. vs.* The Old Dominion Copper Mining Company.

118 Int. 5. If in your answer to the last interrogatory you say that Mr. Pascoe did deliver said papers to you, state where you were when he delivered them to you and at what hour of the day he delivered them to you.

Answer. Pascoe delivered me those papers on a piece of ground adjoining our furnaces, which we rented from J. Vosborgh for the purpose of piling wood thereon, and, as near as I can determine, it it was about 5.30 p. m. on the evening of that day.

Int. 6. If there are any facts you can recollect that fix the time of such delivery in your memory, state them.

Answer. Our surface work had ceased for the day, and it was about the time when daylight was merging into twilight. I was on my way to dinner at the village, 1½ miles distant, where my usual dinner hour was six o'clock. I recollect asking Pascoe if attachments would interfere with our work, and stated to him that every particle of the personal property of the corporation was blanketed by judgments in favor of Pope, Cole & Co., and he replied that there was no intention to stop our work.

(Signed) ALEX. P. THOMAS.

[COMMISSIONER'S SEAL.] Subscribed and sworn to this 13th day of August, A. D. 1888, before me—

PHILIP A. HOYNE,
A Commissioner for the Territory of Arizona, Residing in Chicago, Illinois.

STATE OF ILLINOIS, } *ss:*
County of Cook, City of Chicago, }

I, Philip A. Hoyne, a commissioner of the Territory of Arizona, residing in Chicago, in the State of Illinois, do hereby certify that the witness named in the stipulation hereunto annexed, Alexander P. Thomas, appeared before me, and, after being duly sworn, his evidence was taken and read over and corrected by him;

119 after which he subscribed the same in my presence on the 13th day of August, A. D. 1888, at my office, 52 Government building, in the city of Chicago, county of Cook and State of Illinois, and that I have personal knowledge of said witness.

In witness whereof I have hereunto set
[COMMISSIONER'S SEAL.] my hand and official seal the day and year aforesaid.

PHILIP A. HOYNE,
A Commissioner for the Territory of Arizona in Chicago, Ill.

In the District Court of the Second Judicial District of the Territory of Arizona in and for the County of Gila.

WILLIAM KEYSER, Plaintiff,
vs.
GEO. E. SHUTE, ADOLF LADENBURG, ERNST THALMANN, and ABRAHAM LIMBURGER, Defendants.

It is hereby stipulated that the deposition of Alexander P. Thomas, a witness on behalf of plaintiff, may be taken in the above-entitled action upon the following interrogatories and cross-interrogatories by any commissioner for the Territory of Arizona in the State of Massachusetts, to be read at the trial of said action by either party, subject to all objections as to competency and relevancy, all formalities in the taking thereof being waived.

ANDERSON, FITZGERALD & ANDERSON,
Attorneys for Plaintiff.
(Signed) GEO. G. BERRY, *Attorney for Defendants.*

(Endorsed:) No. 302. In the district court of the second judicial district of the Territory of Arizona in and for the county of Gila. William Keyser *vs.* Geo. E. Shute *et al.* Stipulation on the deposition of Alexander P. Thomas and deposition. Filed October 16, 1888. B. G. Fox, clerk. Anderson, Fitzgerald & Anderson, attorneys for plaintiff.

120 U.

Deposition of Geo. E. White.

District Court, Second Judicial District of the Territory of Arizona in and for the County of Gila.

WILLIAM KEYSER, Plaintiff,
vs.
GEORGE E. SHUTE *et al.*, Defendants.

The deposition of Geo. E. White, taken in behalf of plaintiff, to be read in the above-entitled action subject to objections as to relevancy and competency—J. A. Anderson, attorney for plaintiff; Geo. G. Berry, attorney for defendants.

Interrogatories by Plaintiff.

Int. 1. Where were you residing and in what business engaged on the 23rd day of February, 1884?

Ans. Globe, A. T.; book-keeper for the Old Dominion Copper Mining Co.

Int. 2. Who was superintendent of said company at that time?

Ans. Capt. Alex. P. Thomas.

Int. 3. Where were you and Captain Thomas on the afternoon of the 23rd of February, 1884?

Ans. In the company's office.

Int. 4. At what time did you leave the company's office on that afternoon, and where did you go?

Ans. 4. About half past four, and then went home, in Globe.

Int. 5. Where is the company's office situated, and how
121 far from Globe?

Ans. 5. North of Globe; distance, about one mile; at the works and mines of the company.

Int. 6. Were you at that time acquainted with Mr. Pascoe, the sheriff of Gila county?

Ans. 6. I was.

Int. 7. During that afternoon and whilst you were at the office did Mr. Pascoe serve any attachment papers on Mr. Thomas?

Ans. 7. He did not.

Int. 8. Do you know whether Mr. Pascoe was out of town on that day and what time he returned? If so, state the source of your means of that knowledge.

Ans. 8. In a conversation with Mr. Pascoe the next morning he remarked to me that he was out in the country the day previous and he did not return until late in the evening; that if he had remained in town the result would have been very different. The conversation was in regard as to the time in which the judgment and attachment were recorded.

Int. 9. What judgment and attachment were you talking about?

Ans. 9. The judgment of Pope, Cole & Company and the attachment of Ladenburg, Thalmann and Company.

Int. 10. Against whom?

Ans. 10. The Old Dominion Copper Mining Company.

Cross-examination:

Int. 11. Col. White, were you at that time of which you are testifying in the employ of the Old Dominion Copper Mining Company, and are you now in the employ of the Old Dominion Copper — Company?

122 Ans. 11. I was and am.

Int. 12. What were your duties at that time?

Ans. 12. Book-keeper.

Int. 13. As book-keeper, you were in your office most of that day, weren't you?

Ans. 13. Yes, sir.

Int. 14. Was Capt. Thomas with you in the office during that afternoon all the time?

Ans. 14. Yes; during the business hours.

Int. 15. Do you remember specifically, from your own recollection now, that on the afternoon of the 23rd of February, 1884, Capt. Thomas was all the afternoon in the office of the company at the mill, or do you so state from a knowledge of his general custom of being in the office during business hours?

Ans. 15. I do; Capt. Thomas was in the office all that afternoon.

Int. 16. At what time was it your custom to leave the office?

Ans. 16. About half past four in the afternoon.

Int. 17. Were you living up town or on the mill premises?

Ans. 17. Residing in town.

Int. 18. Did Mr. Thomas come with you to town that afternoon?

Ans. 18. He did not.

Int. 19. Did he live in town, as well as yourself?

Ans. 19. He slept at the superintendent's house and took his meals in town.

Int. 20. Was it your custom to come up town together, he
123 for his meals and you to come home?

Ans. 20. It was not.

(Signed) GEO. E. WHITE.

[District Court Seal.] Subscribed and sworn to before me this 16th day of October, 1888.

B. G. FOX, *Clerk.*

(Endorsed:) No. 302. District court, Gila county, Arizona Territory. William Keyser, plaintiff, *vs.* Geo E. Shute *et al.*, defendants. Deposition of Geo. E. White. Filed Oct. 16th, 1888. B. G. Fox, clerk.

V.

Minute Entry—Deposition of J. A. Anderson.

Plaintiff offers in evidence deposition of J. A. Anderson.

Defendants object to its introduction on the ground that it is immaterial and irrelevant.

In the District Court of the Second Judicial District of the Territory of Arizona in and for the County of Gila.

WILLIAM KEYSER, Plaintiff,
vs.
GEORGE E. SHUTE *et al.*, Defendants.

J. A. Anderson, a witness for the plaintiff, deposes and says that he was the attorney of plaintiff in the above-entitled action in the management of the sale of the property in controversy in this suit, under and by virtue of an execution issued from this court on a judgment in favor of Pope, Cole & Co. *vs.* Old Dominion Cop-
124 per Mining Company, said execution having been issued January 26, 1886, on the sale thereunder on the 20th of February, 1886; that there were twenty-two parcels of land sold on said day and each parcel was sold separately; that the whole property sold, in the aggregate, for $130,000; that the three pieces in controversy in this suit sold for at least $120,000 of that amount; that the property was sold to Mr. William Keyser, the plaintiff in this suit, and the $130,000 was paid on the day of sale to the sheriff as follows, to wit: $2,765 was paid to the sheriff as commissions; the balance was paid to Mr. Keyser, the owner of the judgment, by the sheriff taking the receipt of himself as attorney for Mr. Keyser, the

same to be returned and was returned by the sheriff as a credit upon the judgment on which the execution issued; that the said purchase was made by Mr. Keyser or by me for him and the money paid and a deed taken by me at the expiration of the time for redemption for Mr. Keyser without any knowledge or notice on the part of myself or Mr. Keyser of the existence of any claim or pretense on the part of any one whatever that the copies of attachment issued in the three suits at Tombstone in favor of Ladenburg, Thalmann & Co. *vs.* The Old Dominion Copper Mining Company were delivered to the recorder, Miiler, at any other time whatever than at 6 o'clock p. m. February 23d, 1884, as endorsed by said recorder on the copies on file in the recorder's office, and that we did not have any knowledge or notice of any such claim or pretense till last April, when shown the affidavit of said Miller, upon which a continuance was granted at the last term of this court.

(Signed) J. A. ANDERSON.

125 District Court Seal. Subscribed and sworn to before me this 16th day of October, 1888.

B. G. FOX, *Clerk.*

The above may be read as the deposition of J. A. Anderson on the trial of the above-entitled action.

GEO. G. BERRY,
Attorney for Defendants.

(Endorsed:) No. 302. District court of Gila county, Arizona. William Keyser *vs.* Geo. E. Shute *et al.* Deposition of J. A. Anderson. Filed Oct. 16, 1888. B. G. Fox, clerk.

W.

Minute Entry and Transcript of Minutes District Court Cochise County, Showing Order Allowing Sheriff to Make Amended Return.

Regular Term, Oct., 1888.

WEDNESDAY, *October* 17, 1888.

WM. KEYSER *vs.* GEO. E. SHUTE *et al.* } On Trial.

The parties to this action being present, by their respective attorneys, the hearing of evidence proceeded.

Defendants offer in evidence transcript of minutes of second judicial district court of Cochise county, Arizona, showing order granting leave to amend sheriff's return on writs of attachment in cases of A. Ladenburg *et al. vs.* The Old Dominion Copper Mining Company, Nos. 876, 877, and 878.

Plaintiff objects to its introduction for the reason and upon the

same grounds as objection to amended returns heretofore interposed.

126 ADOLF LADENBURG *et al.* *vs.* THE OLD DOMINION MINING COPPER CO. } 877.

ADOLF LADENBURG *et al.* *vs.* THE OLD DOMINION MINING COPPER CO. } 876.

ADOLF LADENBURG *et al.* *vs.* THE OLD DOMINION MINING COPPER CO. } 878.

The application of the plaintiff to allow B. F. Pascoe, former sheriff of Gila county, to so amend his return to the attachment heretofore levied in the said cases as to show the hour of the day at which the said levy was made coming on to be heard this day, and Geo. G. Berry, Esq., appearing for plaintiff, and there being no appearance on the part of the defendants' attorneys, and it appearing that due notice of this motion had been given to the defendants' attorneys of the time and place at which the said motion would be made, and the court being fully advised in the premises hereby grants leave to the said sheriff to amend his said return in manner and form as set forth in the notice of motion to amend.

TERRITORY OF ARIZONA, } *County of Cochise.* }

I hereby certify the annexed and foregoing to be a full, true, and correct copy of the minute entry of page 120 of Minute Book
127 No. 4 of district court records, May term, 1888, in the cause entitled "Adolf Ladenburg *et al. vs.* The Old Dominion Mining Copper Co., reg. Nos. 877, 876, and 878," on file in the clerk's office of the district court of the second judicial district of the Territory of Arizona in and for the county of Cochise.

[SEAL.] Witness my hand and the seal of said court this 10th day of October, A. D. 1888.

GEO. H. DAILY, *Clerk*,
By WM. D. MONMONIER,
Deputy Clerk.

(Endorsed:) In the district court, Territory of Arizona, county of Cochise. Adolf Ladenburg *et al. vs.* Old Dominion Copper Mining Company. Transcript of minutes of court. No. 302. District court, Gila county, Arizona. Keyser *vs.* Shute *et al.* Filed Oct. 17, 1888. B. G. Fox, clerk.

X.

Testimony of Alex. Trippel—Minute Entry.

Alexander Trippel was sworn as a witness in behalf of plaintiff.

Object of the evidence is to show knowledge on the part of the company of the existence of the confessed judgment offered in evidence in this case and part payment thereof by the company prior to the sale under execution.

Defendants' object to the testimony offered on the ground
128 that it is irrelevant, and even if a ratification was shown by the corporation after the entry of the judgment it could not relate back to affect our prior lien by attachment.

ALEXANDER TRIPPEL testified as follows:

Int. 1. Doctor, were you ever connected with the Old Dominion Copper Mining Company; and, if so, in what capacity?

Ans. 1. I was in charge of the smelting works and then as superintendent.

Int. 2. Do you know how the proceeds of the mine during the time you were superintendent were appropriated? If so, state how.

Ans. 2. I do; they were appropriated chiefly to pay a certain indebtedness owing to Pope, Cole & Co.

Int. 3. What indebtedness was it?

Ans. 3. It was an indebtedness which originated by advances made by Pope, Cole and Company to the Old Dominion Copper Mining Company.

Int. 4. What shape was the indebtedness in at the time?

Ans. 4. In shape of a confessed judgment here in Globe.

Cross-examination expressly waived by defendants.

Minute Book 1, pages 537, 538.

Y.

Testimony of J. A. Anderson—Minute Entry.

J. A. ANDERSON sworn as a witness on behalf of the plaintiff and testifies as follows:

In the summer of 1885 I was retained as counsel for the Old Dominion Copper Mining Company in this Territory. In January,
1886, I was instructed by the company to proceed to Globe;
129 that the company found it impossible to pay the judgment of Pope, Cole & Co. against the company, which originally had been about $277,000, and that they had paid an amount on said judgment sufficient to reduce it to $170,000; that the owner of the judgment insisted that the property should be sold under execution; that I should superintend the sale of the property under exe-

cution and see that the credit was entered. They instructed me that Mr. Wm. Keyser was the owner of the judgment and insisted that the property should be sold under execution to satisfy the balance; that he would probably have to buy the property in under the execution, and that he desired me to see that the whole proceeding was conducted according to law. I afterwards had the credit entered and execution issued for the balance. After the sale I was consulted by the company as to its status in reference to the property, whether they were entitled to retain possession between the time of sale and the time of expiration of the redemption. I informed them that they were entitled to retain possession for six months, until the sheriff's deed was made, if not redeemed, and that at the end of six months, if the sheriff's deed was made, they should turn the property over to Mr. Keyser, the purchaser, and it was done.

The defendants move the court to strike out all of the testimony of J. A. Anderson on the ground that the same is irrelevant and simply goes to show what was done under the execution in favor of Pope, Cole & Co. against the Old Dominion Copper Mining Company, all of which matters are shown by the return on the execution.

Minute Book 1, pages 536, 537.

130 VIII.

There was no statement of facts or bill of exceptions stipulated by the parties or settled or signed by the court or judge in the transcript from the district court to the supreme court of the Territory, but the foregoing exhibits set out in paragraph VII were in the transcript, and the transcript contained a certificate of the clerk of the district court, which is as follows, to wit:

Certificate of Clerk.

In the District Court of the Second Judicial District of the Territory of Arizona in and for the County of Gila.

WILLIAM KEYSER (a Resident of the City of Baltimore and State of Maryland), Plaintiff and Respondent,

vs.

GEO. E. SHUTE (a Resident and Sheriff of Gila County, Territory of Arizona) and Adolf Ladenburg, Ernst Thalmann, and Abraham Limburger (as Copartners under the Name of Ladenburg, Thalmann & Co.) and all Citizens of the City of New York, in the State of New York, Defendants and Appellants.

I, B. G. Fox, clerk of the district court of the second judicial district of the Territory of Arizona in and for the county of Gila, do hereby certify the foregoing to be full, true, and correct copies of the original papers on file in said action and constituting the transcript on appeal of said cause to the supreme court of the Territory of Arizona from said district court, and I further certify that the

appellants in said cause filed in said cause in due time and form an undertaking on appeal in the sum of three hundred dollars; that said undertaking was approved by me and is now on file in my office with the papers in said cause.

In witness whereof I have hereunto set
[District Court Seal.] my hand and the seal of said district court this 14th day of May, A. D. 1888.

B. G. FOX, *Clerk*.

131 IX.

Upon the appeal as thus presented the appellants (defendants in the district court) urged on the attention of the supreme court of the Territory—

1st. That a corporation has no power to confess a valid judgment

2nd. That the attachment lien was prior in time to the lien created by the confessed judgment, if valid.

3d. That a corporation had no power to confess a judgment which would be valid without an action in the courts of the Territory of Arizona under the statute which provides generally for the confession of judgments.

The appellate court, to wit, the supreme court of the Territory of Arizona, refused to look beyond the judgment-roll, consisting of complaint, order for injunction, demurrer and answer, order overruling the demurrer, order for judgment, and judgment and summons, and refused to consider any of appellants' (defendants') assignment of errors, as the transcript contained no statement of facts or bill of exceptions, stipulated, signed, or settled, but did look into the judgment-roll and into the order overruling defendants' demurrer to plaintiff's complaint, and, finding no error therein, did, on the 16th day of January, A. D. 1892, enter judgment for appellee, William Keyser, and against appellants, Geo. E. Shute, sheriff; Adolf Ladenburg, Ernst Thalmann, and Abraham Limburger, under the firm name of Ladenburg, Thalmann & Co.; which said judgment is as follows, to wit:

GEORGE E. SHUTE *et al.*, Appellant-,
vs.
WILLIAM KEYSER, Appellee. } Docket No. 293.

This cause having heretofore, on the 14th day of April, 1890, been argued, submitted, and by the court taken under advisement, and the court being fully advised in the premises—

132 Wherefore it is by the court ordered, adjudged, and decreed that the judgment and decision rendered herein by the district court of the second judicial district of the Territory of Arizona in and for the county of Gila and from which this appeal was taken be, and the same is, in all respects affirmed.

It is further ordered, adjudged, and decreed that the appellee, William Keyser, do have and recover of the appellants and Geo. G. Berry and A. H. Emanuel, the sureties *of* the appeal bond, his costs, taxed at thirty-nine $\frac{65}{100}$ ($39.65) dollars.

And it is forther ordered that the appellee recover of the appellant- his costs in this court, taxed at eight $\frac{50}{100}$ ($8.50) dollars.

133 UNITED STATES OF AMERICA, } ss:
Territory of Arizona, }

I hereby certify that the above and foregoing statement of facts in the nature of a special verdict was prepared by the counsel for appellants and by him submitted to *to* the counsel for appellee, Messrs. Anderson, Fitzgerald and Anderson, for correction, alteration, or approval; that said counsel for appellee made some corrections and alterations of the same and resubmitted it as thus corrected and altered to the counsel for appellants with their consent that the statement as corrected and altered by them be settled, signed, and certified by the court as the statement of facts in the case. Counsel consenting, the court hereby settles, signs, and certifies the same to be a full, true, and correct statement of facts in the nature of a special verdict on appeal to the Supreme Court of the United States in the afore-entitled case of George E. Shute *et al. vs.* William Keyser from the judgment rendered therein in the supreme court of the Territory of Arizona on the sixteenth day of January, A. D. 1892.

Dated June 7th, A. D. 1892.

HENRY C. GOODING,
Chief Justice of the Supreme Court of Arizona.

134 In the Supreme Court of the Territory of Arizona.

WILLIAM KEYSER, Plaintiff & Appellee,
against
GEORGE E. SHUTE, Sheriff, and ADOLF LADENBURG, ERNST Thalmann, and Abraham Limburger, Copartners under the Name of Ladenburg, Thalmann & Co., Defendants & Appellants.

The above-named defendants and appellants, conceiving themaggrieved by the final judgment, order, and decree entered by the supreme court of the Territory of Arizona on the sixteenth day of January, A. D. 1892, in the above-entitled cause, in which the judgment of the district court of the second judicial district of Arizona in and for the county of Gila, overruling defendants' demurrer and making perpetual the injunction theretofore granted in said action and perpetually enjoining the above-named defendants and each of them from selling the three pieces of real estate mentioned, set out, and described in the plaintiff's complaint under the executions therein set out, and giving plaintiff judgment for his costs, taxed at $39.65, was affirmed, and their appeal therefrom to this court was dismissed, and judgment was rendered against these appellants for costs in the sum of $8.50, do hereby appeal from such judgment of the supreme court of the Territory of Arizona to the Supreme Court of the United States, and pray that this their appeal may be allowed,

and that a transcript of the record, proceedings, judgment, decision, and opinion in this cause be duly authenticated and sent to the Supreme Court of the United States.

135 GEORGE E. SHUTE, *Sheriff.*
ADOLPH LADENBURG,
ERNST THALMANN AND
ABRAHAM LIMBURGER,
LADENBURG, THALMANN & CO.,
In Person.
GEORGE G. BERRY,
WEBSTER STREET,
Attorneys for Defendant- and Appellants.

And now, to wit, on the thirteenth day of February, A. D. 1892, the appeal prayed for in the foregoing petition is hereby allowed, with citation to issue on filing a bond in the penal sum of one thousand dollars, with two good and sufficient sureties approved by the chief justice of the supreme court of Arizona or any associate justice thereof.

HENRY C. GOODING,
Chief Justice of the Supreme Court of Arizona.

Endorsed: No. 293. In the supreme court of Arizona. William Keyser, appellee, *vs.* George Shute *et al.*, appellants. Petition for appeal. Filed February 13, 1892. T. D. Hammond, clerk.

136 In the Supreme Court of the Territory of Arizona.

GEORGE E. SHUTE, Sheriff, and ADOLF LADENburg, Ernst Thalmann, and Abraham Limburger, as Copartners under the Firm Name of Ladenburg, Thalmann & Co., Appellants,
vs.
WILLIAM KEYSER, Appellee.
} Affidavit of Value.

STATE OF NEW YORK, *City and County of New York,* } *ss:*

Ernst Thalmann, being duly sworn, says that he is one of the defendants in the lower court and one of the appellants herein; that he is acquainted with the value of the property in dispute and amount in controversy in this case described in the complaint, and that the value of said property is over five thousand dollars and is of the value of fifty thousand dollars, and that the value of the amount in controversy in this cause, exclusive of costs, is over five thousand dollars and is of the value of $25,000 and over. Affiant says that the complaint and answer show such property in said controversy to be of value over five thousand dollars, exclusive of costs.

That this affidavit is made for the purpose of perfecting an appeal of said cause to the Supreme Court of the United States and of

showing said court that they have jurisdiction of said cause on appeal so far as the value of the property or the amount in controversy is concerned.

ERNST THALMANN.

137 Subscribed and sworn to before me this 23d day of February, A. D. 1892.

HY. H. WHITMAN,
[SEAL.] *Notary Public, N. Y. Co.*

Form 2. 1297.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, Leonard A. Giegerich, clerk of the city and county of New York and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that Hy. H. Whitman, before whom the annexed deposition was taken, was at the time of taking the same a notary public of New York, dwelling in said city and county, duly appointed and sworn, and authorized to administer oaths to be used in any court in said State and for general purposes; that I am well acquainted with the handwriting of said notary, and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of said court and county the 25th day of February, 1892.

WM. J. McKENNA, *Clerk.*

Endorsed: In the supreme court of the Territory of Arizona. George E. Shute *et al.*, appellants, *vs.* William Keyser, appellee. Affidavit of value. Filed March 7, 1892. T. D. Hammond, clerk.

138 In the Supreme Court of the United States.

GEORGE E. SHUTE, Sheriff, and ADOLF LADENBURG, ERNST Thalmann, and Abraham Limburger, as Copartners under the Firm Name of Ladenburg, Thalman & Co., Appellants,
vs.
WILLIAM KEYSER, Appellee.

THE UNITED STATES OF AMERICA, *ss:*

To William Keyser, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next (A. D. 1892), pursuant to and in answer to an appeal allowed on the thirteenth day of February, A. D. 1892, by the chief justice of the Territory of Arizona from a judgment of the supreme court of the Territory of Arizona, entered therein on the sixteenth day of January, A. D. 1892, in favor of

yourself, William Keyser, and against George E. Shute, sheriff, and Adolf Ladenburg, Ernst Thalmann, and Abraham Limburger, as copartners under the firm name of Ladenburg, Thalmann & Co., overruling defendants' demurrer and making perpetual the injunction theretofore granted by the district court and perpetually enjoining the above-named appellants and each of them from selling three pieces of real estate mentioned, set out, and described in the pleadings under the execution therein set out, and giving appellant judgment for his costs, taxed at $39.65 in the district court, and taxed at $8.50 on appeal in said supreme court, and dismissing the appeal of these appellants from the judgment of the district court to said supreme court of the Territory of Arizona;

And to show cause, if any there be, why the said judgment rendered against these appellants and in your favor should not
139 be reversed, set aside, and corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry C. Gooding, chief justice of the supreme court of the Territory of Arizona, this twelfth day of March, A. D. 1892.

HENRY C. GOODING,
Chief Justice of the Supreme Court of the Territory of Arizona.

STATE OF CALIFORNIA, }
County of Los Angeles, } *ss:*

This is to certify that we, Anderson, Fitzgerald & Anderson, attorneys for said William Keyser, appellee, mentioned in the above citation, hereby admit and accept service of the above citation, and acknowledge receipt of certified copy of the same, at Los Angeles, the 16th day of March, A. D. 1892.

ANDERSON, FITZGERALD & ANDERSON,
Attorneys for William Keyser, Appellee.

Endorsed: In Supreme Court of United States. George E. Shute *et al.*, appellants, *vs.* William Keyser, appellee. Citation. Filed this 12th day of March, A. D. 1892. T. D. Hammond, clerk of the supreme court of the Territory of Arizona.

140 Supreme Court of the United States.

GEORGE E. SHUTE, Sheriff, and ADOLF LADENburg, Ernst Thalmann, and Abraham Limburger, as Copartners under the Firm Name of Ladenburg, Thalmann & Co., Appellants,
vs.
WILLIAM KEYSER, Appellee. } Bond on Appeal.

Know all men by these presents that we, Adolf Ladenburg and Ernst Thalmann, as surviving members of the firm of Ladenburg, Thalmann & Co., in our individual capacity, and also Ladenburg, Thalmann & Co., a partnership composed of Adolph Ladenburg,

Ernst Thalmann, and the above-named Abraham Limburger, now deceased, both of New York city, State of New York, and being a part of the appellants herein, and William Christy, of Maricopa county, Arizona, and M. W. Messenger, of Maricopa county, Arizona, being sureties for all of said appellants herein, are held and firmly bound unto William Keyser, of the city of Baltimore and State of Maryland, and appellee herein, in the sum of one thousand dollars ($1,000), to be paid to him, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this twenty-fifth day of February, 1892.

Whereas the above-named appellants, Adolf Ladenburg and Ernst Thalmann, as surviving copartners of the plaintiffs' firm of Ladenburg, Thalmann & Co., have obtained an allowance of appeal and have taken and prosecuted an appeal to the Supreme Court of the United States to reverse the judgment rendered and
141 entered against them in favor of William Keyser, the appellee herein, in the supreme court of the Territory of Arizona on the sixteenth day of January, A. D. 1892, in an action then and there pending between them:

Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute their appeal to effect and shall answer all damages and costs if they fail to make their plea good, then this obligation to be void; otherwise to remain in full force and virtue.

Sealed with our seals and dated this twenty-fifth day of February, A. D. 1892.

A. LADENBURG. [SEAL.]
ERNST THALMANN. [SEAL.]
WM. CHRISTY. [SEAL.]
M. W. MESSENGER. [SEAL.]

Sealed and delivered in the presence of—
HY. H. WHITMAN.

142 STATE OF NEW YORK, } ss:
City and County of New York, }

On this twenty-fifth day of February, A. D. 1892, before me personally came Adolf Ladenburg and Ernst Thalmann, to me known and known to me to be the same persons described in and who executed the foregoing instrument, and they severally acknowledged to me that they executed the same.

HY. H. WHITMAN,
[SEAL.] *Notary Public, N. Y. Co.*

UNITED STATES OF AMERICA, }
Territory of Arizona, } ss:

William Christy and M. W. Messenger, being duly sworn, depose and say each for himself that he is a resident of Maricopa county, Arizona, and that he is worth the sum of one thousand dollars over and above all his debts and liabilities, exclusive of property exempt from execution.

WM. CHRISTY.
M. W. MESSENGER.

Subscribed and sworn to before me this fifth day of March, A. D. 1892.

J. H. EAMES,
[SEAL.] *Notary Public.*

I hereby approve the above bond and the sufficiency of the sureties thereto.

HENRY C. GOODING,
Chief Justice of the Supreme Court of Arizona.

143 Form 1. 1296.

STATE OF NEW YORK, }
City and County of New York, } ss:

I, Leonard A. Giegerich, clerk of the city and county of New York and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that Hy. H. Whitman, whose name is subscribed to the certificate of the proof or acknowledgement of the annexed instrument and thereon written, was at the time of taking such proof or acknowledgement a notary public in and for the city and county of New York, dwelling in the said city, commissioned and sworn and duly authorized to take the same, and, further, that I am well acquainted with the handwriting of such notary and verily believe that the signature to the said certificate of proof or acknowledgement is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said court and county the 25th day of Feb., 1892.

[SEAL.] WM. J. McKENNA, *Clerk.*

Endorsed: U. S. Supreme Court. George E. Shute, sheriff, &c., and others *vs.* William Keyser. Bond on appeal. Filed March 7th, 1892. T. D. Hammond, clerk of the supreme court of Arizona.

144 In the Supreme Court of the United States.

GEORGE E. SHUTE, Sheriff, and ADOLF LADENBURG, ERNST THALMANN, and Abraham Limburger, as Copartners under the Firm Name of Ladenburg, Thalmann & Co., Appellants,
vs.
WILLIAM KEYSER, Appellee.

Assignment of Errors.

Appellants assign as error and say the court erred—

I.

In confining their investigations of the errors of the district court to the judgment-roll of said court and in refusing to consider the other matter contained in the transcript.

II.

In sustaining the district court in its ruling and judgment wherein it did not sustain, but overruled, the demurrer of these appellants to the complaint of appellee.

III.

In sustaining the judgment of the district court and in making the judgment of injunction perpetual.

IV.

In not reversing and setting aside the judgment of the district court and in not giving appellants a new trial and in affirming the judgment of the district court.

V.

That the judgment of the supreme court of the Territory is
145 contrary to law and contrary to the facts shown by the transcript.

VI.

In rendering judgment for the appellee instead of for appellant-.

VII.

In holding that the corporation in this particular case had power to confess valid judgment and that the judgment against the Old Dominion Copper Mining Company was valid as against these appellants and in holding that appellee's title to the property levied upon by appellants was superior to the title of appellants.

VIII.

For other causes apparent on the record.

WEBSTER STREET,
Attorney for Appellants.

Prayer for Reversal.

Wherefore appellants pray that the judgment of the supreme court of the Territory of Arizona be reversed, and that judgment be rendered for the appellants by this court and that the case be remanded for further proceedings.

WEBSTER STREET,
Attorney for Appellants.

146 *Opinion of the Court.*

TERRITORY OF ARIZONA:

In the Supreme Court.

GEORGE E. SHUTE *et al.*, Appellants,
vs.
WILLIAM KEYSER, Appellee.

Appeal from district court of Gila county. W. W. Porter, judge.

George G. Berry, att'y for appellant-; Anderson, Fitzgerald & Anderson, att'ys for appellee.

KIBBEY, *J.:*

This was a suit by the appellee against the appellants George E. Shute, sheriff of Gila county, and the other appellants, judgment creditors of the Old Dominion Copper Mining Company, to enjoin them from a threatened sale of certain property under an execution against that company, being property alleged formerly to have been property of the company, but of which the appellee now alleges himself to be the owner.

A motion has been made in this court to dismiss the appeal because (1) of a defect in the certificate of the clerk of the district court appended to the transcript, in that it omits to state that the transcript is a transcript of all the proceedings had in the cause and the court below.

(2.) The transcript does not contain a copy of the appeal bond or affidavit in lieu thereof.

(3.) The transcript does not contain a copy from the fee book of the costs accrued; and

(4.) The transcript does not show that the assignment of errors was ever filed in said cause.

147 An appeal to this court from the judgment of a district court is perfected by giving notice of appeal therefrom in open court and by filing with the clerk of the district court an appeal bond or affidavit in lieu thereof within twenty (20) days after the expiration of the term at which the judgment appealed from was rendered.

Sec. 849 R. S., 1887, Ariz.

It appears from the transcript originally filed here, omitting notice of some irregularities relative thereto, which we deem to have been waived by the stipulation of the parties, that notice of appeal was given. The original transcript omits, however, any mention of the filing of an appeal bond or affidavit in lieu thereof, but there appears in the certificate of the clerk of the district court whence this appeal comes the statement that an undertaking on appeal, in due form and time, had been filed and was on file in his office with the papers in the cause.

Appellants, after the motion to dismiss had been made, offered to file an additional transcript (made by the clerk of the district court), which was duly certified, from which it appeared that an appeal bond had been filed within the time and in the form prescribed.

The jurisdiction of this court having vested upon the concurrence of the two acts of giving notice of appeal and the filing of a bond as required, the appellants were allowed to file the additional transcript. The additional transcript also includes the statement of costs, which had been omitted from the original transcript. Ordinarily, in the absence of an assignment of errors, this court is justified in either affirming the judgment below or dismissing the appeal.

Gila R. I. Co. *v.* Wolfley, 24 Pac. R., 257.
Sutherland *v.* Putnam, 24 Pac., 320.
U. S. *v.* Tidball, at this term.

But this is so only when the error is not fundamental; if
148 the error be one appearing on the face of the record and goes directly to the foundation of the right of the plaintiff to maintain his action at all, then we cannot avoid considering it, even though it be not assigned.

See sec. 937, R. S. 1887, Ariz.
U. S. *v.* Tidball (at this term).

To this extent we limit the rule laid down in Sutherland *v.* Putnam.

The motion to dismiss the appeal is overruled.

There was a judgment in the court below, a judgment perpetually enjoining the appellants from selling the property in dispute under the executions described in the complaint.

There is in the record neither a statement of facts, a bill of exceptions, nor a motion for a new trial.

There are several alleged errors argued by appellants, all of them relating to rulings of the court below, made during the progress of the trial of the cause. It is objected here that we cannot consider these errors because they do not properly appear of record.

Appellant- very strenuously urges, however, that our code does not require in cases where the relief sought is merely injunctive that errors occurring at the trial shall be incorporated into the record in the manner prescribed in the code of civil proceedure and cites sec. 2144, R. S. 1887.

Sec. 2144 is, " The principles, practice, and proceedure governing courts of equity shall govern proceedings in injunctions when the

same are not in conflict with the provisions of this act or other law." Upon this appellant- argues that the practice and proceedure, even upon appeal and in the manner of perfecting it, are "governed by the rules of practice of the Federal courts of the United States and the high court of chancery of England."

We cannot concur in that view. Sec. 2144 simply permits the supplying of any matter of practice or proceedure in injunction suits, provisions for which have not been made by our code, and that in supplying such omissions we shall be governed by the principles, practice, and proceedure generally prevalent in courts of equity in such cases. Our code has prescribed the practice and proceedure in all cases of appeal from the district court to this court. It was not intended to prescribe a different practice upon appeal in injunction cases.

Title XXXV, injunctions, of which sec. 2144 is a part, is a separate act within itself, distinct from the general civil code of proceedure; in it there is no provision at all for appeal.

The right to appeal in injunction cases is given by the provisions of the civil code of proceedure, and of course we think governed and regulated by it. If not, we are at a loss to know to what courts of equity we should look for our rules of practice in matters of appeal in injunction cases.

We see no reason for preferring the practice prevailing in the Federal courts to those of any of the several States where there are courts of chancery. Besides, the Federal courts are not "courts of equity" any more than are the courts of our Territory.

There being no statement of facts and no bill of exceptions, the only record presented for our considerations is the judgment-roll. The defendant- demurred to the complaint. The demurrer was overruled. If this be error, it is one fundamental and apparent upon the record and need not here be assogned; as a matter of fact it is not assigned.

It is alleged in the complaint that the appellant Shute is the sheriff of Gila county; that the other appellants are residents of New York and are copartners; that the Old Dominion Copper Mining Company is a corporation organized under the laws of the State of New York and has heretofore been carrying on business in Arizona.

That on and prior to the 23d February, 1884, the Old Dominion Copper Mining Company was the owner of certain mining property, a description of which is set out in the complaint; that on that day a judgment was duly entered in the district court of the 2nd judicial district of the Territory of Arizona in and for Gila county against the said Old Dominion Copper Mining Company in favor of George Pope and others (among whom was the plaintiff in this case) for the sum of $277,378.27 and interest from January 31, 1884, and $10.00 costs; that said judgment was by confession; that on the 26 day of January, 1886, an execution upon said judgment was issued to and placed in the hands of the sheriff of Gila county, commanding him to cause to be made the monies in said writ specified off of the lands, hereditaments, and real prop-

erty (if sufficient personal property could not be found) belonging to said judgment debtor, the Old Dominion Copper Mining Company, on the 23d day of February, 1884, or any time thereafter.

That, there not being sufficient personal property of said debtor, the execution was levied on all the right, title, and interest of said judgment debtor in and to the property described in the complaint as the property of the judgment debtor, and that the same was duly sold under and by virtue of said execution and levy by said sheriff (together with other real estate of said debtor) to plaintiff on the 20th day of February, 1886, for $130,000.00, lawful money of the United States, and certificate of sale was duly issued therefor.

That after the time for redemption had expired, to wit, on the 21st August, 1886, a deed was duly executed by said sheriff to plaintiff for the real estate so sold by him to the plaintiff.

That by virtue of said levy sale and deed plaintiff became vested with all the right, title, and interest in said real estate, and on the 21st August, 1886, entered into and has since remained in possession thereof, claiming the fee-simple title thereto under said levy sale and deed.

That on the 30th November, 1887, three judgments were
151 rendered in said district court in and for the county of Cochise in favor of the appellants other than Shute against the Old Dominion Copper Mining Company for sums aggregating $23,822.69; that executions were issued on said judgments on the 16th January, 1888, and have been placed in the hands of the appellant Shute, sheriff of Gila county, and the said sheriff, not regarding the rights of plaintiff, has levied the same on said property and has advertised the same for sale on the 6th of March, 1888, and will, unless restrained, so sell the same, etc.

Appellants discuss several questions in their very full and able brief. They claim that a corporation has not the power to confess a judgment and that they had acquired a prior lien on the property in question by virtue of the levy of certain writs of attachment. The second proposition, because of defects in the record, is not properly presented for our consideration.

Appellants very earnestly contend that a corporation has no power to confess a valid judgment; that therefore the pretended judgment against the Old Dominion Copper Mining Company is void, and plaintiff's title thereunder and consequently his cause of action in this case must fail.

Counsel do not cite us a case wherein the power of a corporation to confess a judgment is denied. We do not know and are not informed by the record what were the powers of the Old Dominion Copper Mining Company. It was a corporation organized under the laws of the State of New York; whether by special charter or under general corporation laws does not appear. That it is private corporation fairly appears, for it is hardly conceivable that a public corporation organized under the laws of New York should be engaged in business in Arizona.

It is admitted by the demurrer that it was engaged transacting business in Arizona, necessarily then entering into contracts.

A domestic private corporation has the power to sue, is liable to be sued, and may appear in court and defend when it is sued, may, we suppose, of course, suffer default and judgment thereby,
152 and we see no reason, in absence of proof to the contrary, to presume that the same attributes do not attach to a foreign private corporation. There are attributes so universally incident to private corporations in modern times that it would be totally at variance with the probabilities to presume otherwise. Indeed it is said by the text writers that it is necessarily implied that a corporation from the mere fact of its incorporation may sue and be sued.

Moriarity Corp., sec. 356.
Field Corp., sec. 360.

Incident to the right to sue and the liability to be sued we think is unquestionably the right to confess judgment.

In no case to which our attention has been called has the power of a corporation to confess judgment been doubted or called in question. In 12 How. Pr. Rep., a case cited by appellant-, doubt of such power was not suggested.

Block, in his recent work on judgments, discusses the power of agents of a corporation to confess a judgment, but does not even intimate that to confess a judgment is *ultra vires* of a corporations; indeed, while he does not in terms assert that power to exist, yet the inference is necessary from his statement that the corporation is bound by a confession of a judgment by its officer upon whom summons might have been served in a contested action.

Block on Judgment, vol. 1, sec. 59, and see Freeman Judgments, sec. 545. And Moriarity lays down the broad rule that the managing ag-nts of a corporation have authority to confess a judgment whenever they deem it to be to the interest of the corporation.

Moriarity, sec. 430.

In Miller Bros. *v.* Bank Md., Ore., 291, wherein a judgment by confession against a corporation was under discussion, the question was whether the president had *virtute officii* the power to confess for his principal; that the confession was *ultra vires* the corporation was not even suggested.

In McMurray *v.* The St. L., &c., Co., 33 Mo., 377, the ques-
153 tions were as to the power *virtute officii* of the president of a corporation to confess judgment, the sufficiency of the statutory statement required to accompany such confession, and the power of the corporation to create a lien by such a judgment, the statutes prohibiting it from mortgaging the property or giving any lien thereon.

In Joliet, &c., Co. *v.* Ingall, 23 Ills. App. Ch., 45, a judgment against a corporation by confession was under consideration. The question whether a corporation had the power to confess a judgment was not suggested. The matter considered was the authority of the particular officer who did confess the judgment to do so.

And so in Stokes *v.* Jersey Pottery Co., 48 N. J. L., 237.
Shew *v.* M'f'g Co., 5 So. Cor., 415.
White *v.* Crow, 17 Fed. R., 98.

And in all these cases there was a direct attack upon the judgment, and not a collateral one, as in this case. We do not entertain a doubt of the general right of a corporation to confess a judgment.

Appellants further urge that an insolvent corporation cannot give a preference to any of its creditors, either by way of confession of judgment or otherwise. This question will not avail appellants in this case, and does not require discussion.

If it could be inferred from the allegations of the complaint that the Old Dominion Copper Mining Company was insolvent at the time of the confession of judgment in question—and we do not say that such inference is warranted—yet it appears that appellants were not creditors until more than three years afterwards.

It would be only then existing creditors who could complain of the confession of a judgment by their debtor; and, moreover, even if the proposition were true that an insolvent corporation cannot confess judgment whereby a preference is given to one of its creditors, this renders the judgment only voidable, and it is not subject to collateral attack.

154 The demurrer was properly overruled, and we find no error apparent on the face of the record.

The judgment will therefore be affirmed.

JOSEPH H. KIBBEY, *A. J.*

Endorsed: In the supreme court, Territory of Arizona. George E. Shute *et al.*, appellants, *vs.* Wm. Keyser, appellee. Opinion. Joseph H. Kibbey, A. J. Filed January 16, 1892. J. E. Walker, clerk. Recorded in Book 2, Opinions, at pages 369–378, inc.

155 Supreme Court, Territory of Arizona.

I, T. D. Hammond, clerk of the supreme court of the Territory of Arizona, do hereby certify that the foregoing printed and written pages are a full, true, and correct transcript of the record and proceedings, assignment of errors, and prayer for reversal, including proceedings on appeal, in the cause of George E. Shute, sheriff, and Adolf Ladenburg, Ernst Thalmann, and Abraham Limburger, as copartners under the firm name of Ladenburg, Thalmann & Co., appellants, against William Keyser, appellee, as the same appears of record and on file in my office, and that I have annexed thereto a full, true, and correct copy of the opinion of the supreme court of the Territory of Arizona in said cause.

Witness my hand and seal of said court this 27th day of June, A. D. 1892.

[Seal Supreme Court, Arizona.]

T. D. HAMMOND,
Clerk of Supreme Court of Arizona.

Endorsed on cover: Case No. 15,157. Arizona Territory supreme court. Term No., 1187. George E. Shute, sheriff, and Adolf Ladenburg, Ernst Thalmann, and Abraham Limburger, copartners under the firm name of Ladenburg, Thalmann & Co., appellants, *vs.* William Keyser. Filed October 4th, 1892.

APR 28 1898
JAMES H. McKENNEY,
CLERK.

MOTION TO DISMISS THE APPEAL.

CASE NO. 15,157.

Supreme Court of the United States.

OCTOBER TERM, 1897.

Term No. 1187.

GEORGE E. SHUTE, SR., and ADOLF LADENBURG, ERNST THALMANN, and ABRAHAM LINDBURGER,

co-partners, under the firm name of

LADENBURG, THALMANN & CO.,

APPELLANTS,

vs.

WILLIAM KNUPER.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

Office Supreme Court U. S.
FILED.
APR 28 1893
JAMES H. McKENNEY,
CLERK.

MOTION TO DISMISS

THE APPEAL.

CASE NO. 15,157.

Supreme Court of the United States,

OCTOBER TERM, 1892.

TERM No. 1187.

GEORGE E. SHUTE, Sheriff, and ADOLF LADENBURG, ERNST THALMANN, and ABRAHAM LIMBURGER,

co-partners, under the firm name of

LADENBURG, THALMANN & CO.,

APPELLANTS,

vs.

WILLIAM KEYSER.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA

GEORGE E. SHUTE, Sheriff,
and
ADOLF LADENBURG,
ERNST THALMANN,
and
ABRAHAM LIMBURGER,
co-partners,
under the firm name of
LADENBURG, THALMANN
& CO.
APPELLANTS,
vs.
WILLIAM KEYSER.

In the
Supreme Court of
the
United States.

OCTOBER TERM,
1892.

TERM NO. 1187.

MOTION TO DISMISS.

William Keyser, the appellee in the above entitled case, moves the Court to dismiss the appeal therein.

1st. For the want of jurisdiction in this Court to hear and determine the same.

2d. Because the citation was not made returnable in sixty days from the signing of the same.

This is an appeal from the final judgment and decree of the Supreme Court of Arizona, entered on the 16th *day of January*, 1892, in which the judgment of the District Court in and for Gila County, overruling the demurrer of the defendants to the complaint of the appellee, and making perpetual the injunction restraining the defendants (appellants), from selling the appellees property, was affirmed.

The citation was attested on the 12th day of March, 1892, and cited the appellee to appear at the Supreme Court of the United States, on the second Monday of October, 1892.

Record, pp. 76, 77.

Inasmuch as since the Act of March 3d, 1891, chap. 517, 26 Statutes, p. 826, establishing the Circuit Court of Appeals, no appeal to this court lies, from such final judgment of said Supreme Court of the Territory of Arizona, the said appellees, now moves the Court that said appeal be dismissed with costs.

And inasmuch as rule 8, section 5, and rule 9, section 4, of this court requires that all citations shall be made returnable within sixty days from the signing of the same, the appellee now moves the Court that said appeal be dismissed with costs.

R. F. BRENT,

Attorney for William Keyser.

Supreme Court, U.S.
FILED.
APR 28 1898
JAMES H. McKENNEY,
CLERK.

APPELLEES' BRIEF

ON MOTION TO DISMISS.

CASE NO. 15,157.

Supreme Court of the United States,

OCTOBER TERM, 1898.

Trans No. 1189.

GEORGE E. SHUTH, Sheriff, and ADOLF LADENBURG, ERNST THALMANN, and ABRAHAM LIMBURGER,

co-partners, under the firm name of

LADENBURG, THALMANN & CO.,

APPELLANTS,

vs.

WILLIAM KEYSER.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA

Office Supreme Court U. S.
FILED
APR 28 1893
JAMES H. McKENNEY,

APPELLEES' BRIEF

ON MOTION TO DISMISS.

CASE NO. 15,157.

Supreme Court of the United States,

OCTOBER TERM, 1892.

TERM No. 1187.

GEORGE E. SHUTE, Sheriff, and ADOLF LADENBURG, ERNST THALMANN, and ABRAHAM LIMBURGER,

co-partners, under the firm name of

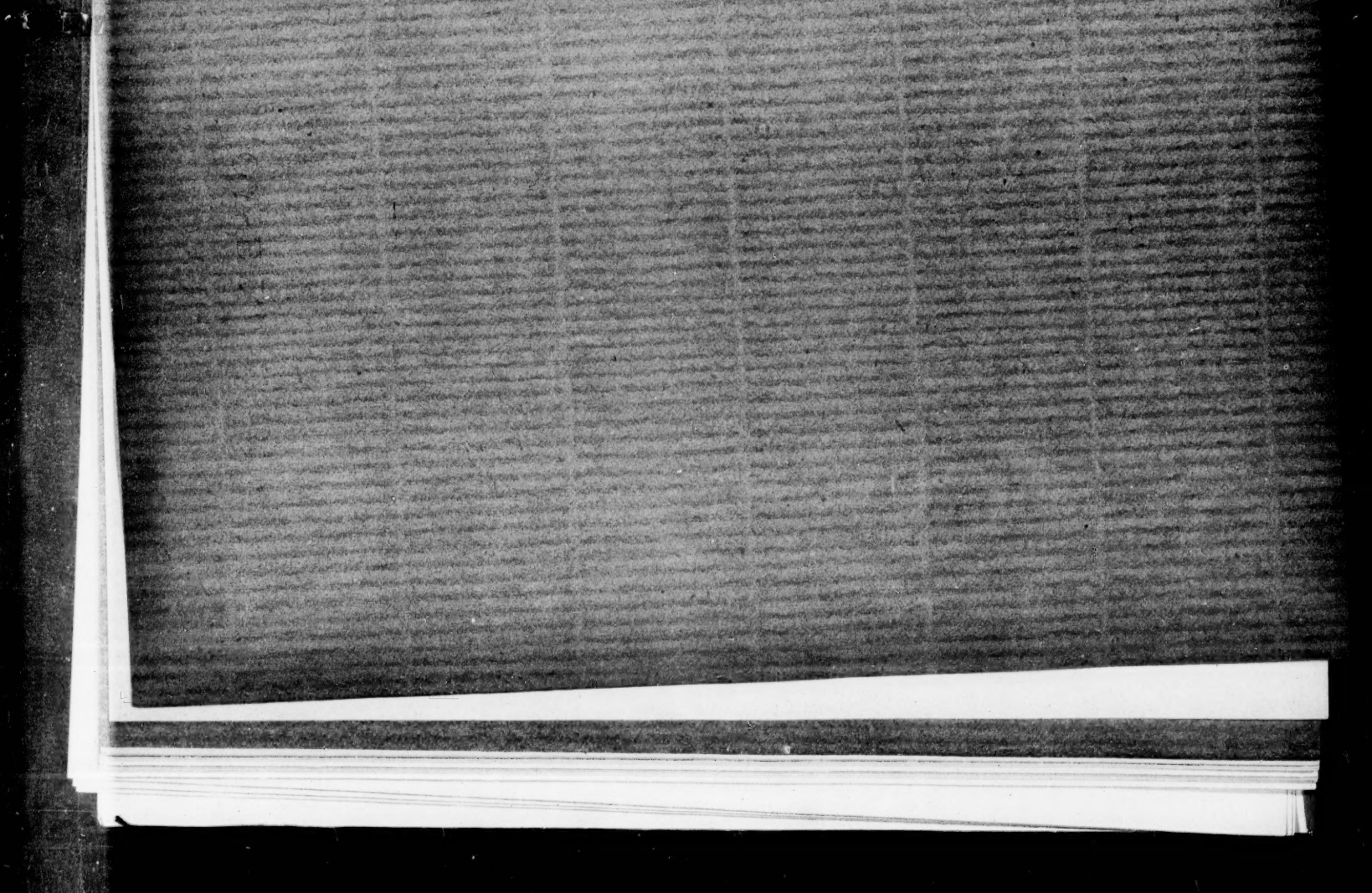
LADENBURG, THALMANN & CO.,

APPELLANTS,

vs.

WILLIAM KEYSER.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA



CASE No. 15,157.

GEORGE E. SHUTE, Sheriff,
and
ADOLF LADENBURG,
ERNST THALMANN,
and
ABRAHAM LIMBURGER,
co-partners,
under the firm name of
LADENBURG, THALMANN
& CO.
APPELLANTS,
vs.
WILLIAM KEYSER.

In the
Supreme Court of
the
United States.

OCTOBER TERM,
1892.

TERM No. 1187.

APPELLEES' BRIEF,

ON MOTION TO DISMISS.

STATEMENT OF FACTS.

This is an appeal from the final judgment and decree of the Supreme Court of the Territory of Arizona, entered on the 16th *day of January*, 1892, in which the judgment of the District Court of the Second Judicial District of Arizona, in and for Gila County, overruling the Defendants' (Appellants') demurrer and making perpetual the injunction against the appellants, was affirmed.

The appeal to this Court was taken on *February* 13th, 1892.

Record, pages 74–75.

The citation was attested on the 12th day of March, 1892, and cited the appellee to appear, at the Supreme Court of the United States, on the second Monday of October, 1892.

Record, pages 76–77.

The complaint of the appellee, plaintiff below, alleged that the Old Dominion Copper Mining Company was, on and prior to February 23d, 1884, the owner of certain mining property, in Gila county; that said company, on the ~~26th~~ 25th day of ~~January~~ Feb., 1884, confessed judgment in favor of George Pope and others, among whom was the appellee, for $277,378.27; that on January 26th, 1886, under an execution on said judgment, said mining property was sold to William Keyser, the appellee, who received a deed from the sheriff for the same.

That on *November* 30th, 1887, three judgments were rendered in the District Court, First Judicial District of Arizona, in and for Cochise County, in favor of the appellants, Landenburg, Thalman & Co., against the Old Dominion Copper Mining Company, and that executions had issued on said judgments, and were placed in the hands of the appellant, George E. Shute, sheriff of Gila County, and the sheriff not regarding the rights of the plaintiff, William Keyser, had levied on and was about to sell the said mining property, previously purchased by said Keyser, under the sheriff's sale, as aforesaid.

The prayer for relief was: 1st. For an injunction restraining the defendants from selling said mining property. 2d. That upon final hearing, said injunction be made perpetual, and for further relief.

Record, page 1.

To this complaint, the defendants,

1. Demurred,

2. Denied all allegations.

3. Answered, that on February 23, 1884, the date of the confession of judgment in favor of George Pope and others by the Old Dominion Copper Company, the defendants, had previously entered suit in three different causes of action, in Cochise County, against said Copper Company, in which suits writs of attachments were issued to the sheriff of Gila County, who duly served the same and levied on the said mining property. That judgments were subsequently obtained in Cochise County, on said suits and execution

issued to Gila County, which executions were the same the plaintiff was seeking to enjoin, and further claimed that by reason of the levy made under the writs of attachment on February 23d, 1884, the defendants acquired a prior lien on the property in question.

Record, page 6.

Both parties produced evidence tending to show that their respective liens had priority the one over the other in having been recorded at the earlier period of time.

The District Court having overruled the demurrer of the defendants, and made perpetual the injunction, an appeal was had to the Supreme Court of the Territory, which court affirmed the judgment of the District Court.

The points raised by the appellants in the Supreme Court of the Territory will be found in Record, page 73, and the opinion of the Court, Record, page 81.

POINTS OF LAW.

1

The appeal is erroneously brought to this Honorable Court, and the court has no jurisdiction to entertain it. The final judgment and decree of the Supreme Court of the Territory was rendered on *January* 16th, 1892, and the appeal taken to this court *February* 13th, 1892, both dates being subsequent to the Act of March 3d, 1891, chap. 517, creating the Circuit Court of Appeals.

Prior to this last statute, writs of error and appeals were allowed from the final judgments and decrees of the Supreme Court of Arizona and other territories to the Supreme Court of the United States, "in the same manner and under the same regulations as from the circuit courts of the United States," where the value of property exceeded $1,000.

Rev. Statutes of U. S. Sect. 702.
" " " " " 1909.

Which value of property was increased to $5,000, by Act of March 3d, 1885.

Supplement to Rev. St. of U. S., p. 485.

Such being the law at the time of the passage of the Act of March 3d, 1891, it is necessary to consider what effect the passage of that act had upon the appellate jurisdiction of the court, in cases from the supreme courts of the territories. One of three propositions, it would seem, must be true.

1. That the Supreme Court of the United States will continue to exercise an appellate jurisdiction from the territories, "in the same manner and under the same regulations," as it exercised on appellate jurisdiction prior to the Act of March 3d, 1891, from the Circuit Courts of the United States, notwithstanding that the latter jurisdiction has been taken away and redistributed by the Act of March 3d, 1891.

2. That the supreme court will exercise an appellate jurisdiction from the territories "in the same manner and under the same regulations," as it *now* exercises an appellate jurisdiction, under the Act of March 3d, 1891, from the Circuit Courts of the United States.

3. That the Act of March 3d, 1891, provides for the redistribution of the entire appellate jurisdiction of the national judicial system, and that any appellate jurisdiction of the Supreme Court, from the decisions of the territorial courts, must be found in that act.

As to the first proposition, that notwithstanding the system of appeals from the Circuit Courts has been abolished by the Act of March 3d, 1891, the court will still look to that system for its jurisdiction to hear appeals from the supreme court of the territories. It can hardly be presumed that Congress could have contemplated, when redistributing the appellate jurisdiction of the national judicial system, such a cumbersome mode of procedure. That having repealed the whole system of appeals from the circuit courts, it should have intended to keep that system alive in so far as to allow appeals from the territorial courts. And that this court should thus exercise a live and present appellate jurisdiction based upon a dead and repealed system.

The repeal of a statute carries with it a supplemental statute so dependant upon the former, that it cannot be enforced without such original act.

Ellison vs. Jackson, 12 Cal. 542.

Nor can such a proposition be maintained, in view of the provisions of the Act of March 3d, 1891. Sects. 14 and 15.

Section 14 provides that "all acts and parts of acts relating to appeals or writs of error inconsistent with the provisions for review by appeals or writs of error in the preceeding sections 5 and 6 of this act are hereby repealed."

While section 15 provides "that the Circuit Court of Appeals in cases in which the judgments of the Circuit Court of Appeals are made final by this act shall have the same appellate jurisdiction, by writ of error or appeal to review the judgments, orders and decrees of the supreme courts of the several territories as by this act they may have to review the judgments, orders, and decrees of the district court and circuit courts."

Thus showing the intention of repealing all acts and parts of acts, relating to appeals or writs of error, inconsistent with the provisions of this act and at the same time specifying in what manner appeals might be had from the territories. It would therefore seem untenable to maintain that while the act of March 3d, 1891, repealed the former system of appeals from the district and circuit courts, that because it did not *expressly* repeal the dependent statute, allowing appeals from the territorial courts in the same manner, etc. as appeals from the circuit courts, that appeals can still be had, as heretofore, from the territorial courts, and this notwithstanding that section 15 expressly defines the classes of cases in which, under the new act appeals may be taken from the supreme courts of the territories.

Jurisdiction may be taken away by the repeal of the statute confering it, by implication as well as by express words.

Sutherland on Statutory Construction, p. 222.
New London R. R. Co. vs. Boston & Albany R. R. Co. 102 Mass. 386.
Crisp vs. Bunbury. 8 Bing. 394.

Even if the second proposition can be maintained that the Supreme Court will exercise an appellate jurisdiction from the territories "in the same manner and under the same regulations" as it now exercises an appellate juris-

diction, under the Act of March 3d, 1891, from the Circuit Courts of the United States, this motion to dismiss must prevail, as this case does not come within the classification of cases which, by the act may be appealed directly to the Supreme Court from the circuit courts.

By section 5 it is provided that appeals may be had directly to the Supreme Court, from the district and circuit courts.

1. "In any case in which the jurisdiction of the court is in issue, in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision."

2. "From final sentences and decrees in prize cases."

3. "In cases of conviction of a capital or other infamous crime."

4. "In any case that involves the construction or application of the Constitution of the United Statet."

5. "In any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question."

6. "In any case in which the constitution or law of a state is claimed to be in conflict of the constitution of the United States."

The case at bar does not come within any of the above classes, but is a civil proceeding, asking the court to enjoin the defendents below from selling the property of the appellees, under an execution, on a judgment.

As to the 3d proposition, viz:

That the Act of March 2d, 1891, provides for the re-distribution of the entire appellate jurisdiction of the national judicial system, and that any appellate jurisdiction of the Supreme Court, from the decisions of the territorial courts, must be found in that Act.

As is said in McLish *vs.* Roff, 141 U. S., 666, and quoted with approbation in

Lou o. w. Bew *vs.* United States, 144 U. S., 56.

"It (the Act of March 3d, 1891, Chap. 517) then provides for the distribution of the entire appellate jurisdiction of our national judicial system, between the Supreme Court of the United States and the Circuit Court of Appeals, therein established."

The Act itself gives ample evidence that the intention was not merely to regulate appeals from the District and Circuit Courts, but also those from the Supreme Court of the territories, and from those of the states, and that in fact, it does, in the words of the court, "provide for the distribution of the entire appellate jurisdiction of our national judicial system."

By section 5, it is provided that nothing in this Act shall effect the jurisdiction of the Supreme Court, in cases appealed from the highest court of a state, &c.

And by section 13, "Appeals and writs of error may be taken and prosecuted from the Indian Territory to the Supreme Court of the United States, or to the Circuit Court of Appeals in the eighth circuit, in the same manner and under the same regulations as from the circuit or district courts of the United States, under this Act."

Thus recognizing the necessity of preserving from the effect of the repealing clause of this statute, the right of appeal from the states and the Indian Territory. If the Act had the effect of repealing the statute, allowing appeals from the Indian Territory, it must have had the same effect upon the statute allowing appeals from Arizona and the other territories as both statutes are substantially the same. Appeals were allowed from the Indian Territory by Act of May 2d. 1890, chap. 182, section 9, Supplement to Revised Statutes, page 738, and from Arizona, and other territories, by Revised Statutes of U. S., section 1909.

Having thus established an appellate jurisdiction from the Indian Territory, the Act proceeds to establish and provide for appeals and writs of error from the decisions of the Supreme Courts of all the other territories.

Section 15 Provides "That the Circuit Courts of Appeals in cases in which the judgments of the Circuit Courts of Appeals are made final by this Act shall have the same appellate jurisdiction, by writ of error or appeal, to review the judgments, orders and decrees of the Supreme Courts of the several territories as by this Act they may have to review the judgments, orders and decrees of the district courts and cir-

in case involving the jurisdiction of the territorial courts; final decisions, in prize cases, capital and other infamous crimes, and constitutional questions, and questions affecting treaties.

While the circuit court of appeals would have appellate jurisdiction from the final judgments of the territorial courts, as it has appellate jurisdiction from the circuit courts, and in all other cases, such as are of a domestic and local character, as the case at bar, the judgments of the supreme courts of the territories would, in analogy to the judgments of the supreme courts of the states, be final; and thus the whole jurisdiction would appear to be distributed. In this view of the statute this motion must prevail, as the case at bar does not come under the classes enumerated in section 5, which are appealable directly to the Supreme Court, or under those in section 6, which are appealable to the Circuit Court of Appeals, but should have abided the final judgment of the Supreme Court of the territory.

2.

THE CITATION.

By rule 8 of the court, section 5, all appeals, writs of error, and citations must be made returnable not exceeding thirty days from the day of signing the citation, whether the return day fall in vacation or in term time, and be served before the return day; and by rule 9, section 4, it is provided that, in all cases where the period of thirty days is mentioned in rule 8, it shall be extended to sixty days in writs of error and appeals from California, Arizona, &c.

The appeal in this case was taken on February 13th, 1892,

Record, pp. 74, 75.

and the citation was attested on the 12th day of March, 1892, and cited the appellee to appear at the Supreme Court of the United States, on the second Monday of October, 1892.

Record, pp. 76, 77.

R. F. BRENT,

for Appellee.

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163-704

APPELLANTS' BRIEF

TO OPPOSE MOTION TO DISMISS.

CASE No. 15,157.

Supreme Court of the United States.

OCTOBER TERM, 1892.

TERM No. 1187.

GEORGE E. SHUTE, Sheriff and ADOLF LADENBURG, ERNST THALMANN and ABRAHAM LIMBURGER

copartners under the firm name of

LADENBURG, THALMANN & CO.,

APPELLANTS.

vs.

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APPEAL EROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

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POINTS.

First Point. Section 15 of Chap. 517 of the Laws of the Fifty-first Congress, Session 2, being the act of March 3d, 1891, entitled, "An Act to establish Circuit "Courts of Appeal, and to define and regulate in certain "cases the jurisdiction of the courts of the United States, "and for other purposes," provides that the Circuit

Court of Appeals, in cases in which the judgments of the Circuit Court of Appeal are made final by that act, shall have the same appellate jurisdiction by writ of error or appeal to review the judgments, orders and decrees of the Supreme Courts of the several Territories as by that act they may have to review the judgments, orders and decrees of the District Court and Circuit Courts.

The appellate jurisdiction of the Circuit Court of Appeals to review judgments of Territorial Supreme Courts is thus confined to cases where the judgment of the Circuit Court of Appeals is "*made final by this act.*"

The only causes "*made final by this act*" are those mentioned in Section 6 of such act, which declares that judgments and decrees of the Circuit Court of Appeals shall be final in the following cases, to wit:

1. In all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different States.

2. Patent cases.

3. Cases under revenue laws.

4. Criminal cases.

5. Admiralty cases.

It is apparent from inspection that the cause of action in the suit at bar falls under none of these heads. The jurisdiction of the Territorial Court was an original one, and did not depend upon diverse citizenship.

Of course it may be said that any judgment of the District Court of the Territory, or Supreme Court, or even a Justice's Court, is final as to the Court in which it is rendered, whether an appeal lies or not. Indeed

it is only from final judgments (except a few specified interlocutory judgments) that any appeal ever lies to any higher court; and, in one sense, every judgment of the Circuit Court of Appeals determining the right of parties is a final judgment, but it would not be "*made final by this act.*" The words "final by this act" are certainly used in the same sense in which the word "final" is used in Section 6 of the act. No other judgments can be said to be made final by the act, for the mention of the five cases in Section 6, in which the judgment of the Circuit Court of Appeals is stated to be final, is necessarily exclusive of any other cases.

Second Point. Section 6 of the act expressly provides as follows:

"*In all cases not hereinbefore in this section made final there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States, where the matter in controversy shall exceed $1,000, besides costs.*"

Even if there was not this express provision, just quoted, permitting an appeal of this character direct to the United States Supreme Court, it would seem to be enough to say that Section 702 of the United States Revised Statutes, permitting writs of error and appeals from Supreme Courts of Territories to the United States Supreme Court, is not repealed by the Circuit Court of Appeals act.

Section 691 of the Revised Statutes is repealed; and also all acts and parts of acts relating to appeals or writs of error inconsistent with the provisions for review by appeals or writs of error in the preceding Sections 5 and 6 of the act, are declared repealed in Section 14, but there being express provision, as quoted above, at the foot of Section 6, for appeals in all cases not by said Section 6 made final, by writ of error or appeal to the Supreme Court of the United States, Section 702 of the

U. S. Revised Statutes is necessarily reserved in force. In other words, Section 702 is not inconsistent with the provisions, for review by the Supreme Court of the United States as provided at the foot of Section 6 (quoted *supra*), and is, consequently, not repealed. The express provision, however, in Section 6, permitting these appeals, is absolute as to the appellants' right to take this appeal.

Section 702 in no event is repealed by the Circuit Court of Appeals Act. It is only acts relating to appeals from Circuit Courts of the United States inconsistent with the provisions of the Circuit Court of Appeals Act that are repealed, and not acts regulating appeals from Supreme Courts of Territories to the United States Supreme Court not provided for by Section 6.

Third Point. It is the manifest intention of the Circuit Court of Appeals Act to preserve appeals from Territorial Supreme Courts to the Supreme Court of the United States in all cases not made final by Section 6 of the act. This is clear, because:

1st. There is no provision restricting or limiting appeals in such other cases to the Circuit Court of Appeals.

2d. There is no provision for appeals in such other cases to the Circuit Court of Appeals.

3d. There is no repeal of the provisions of the U. S. Revised Statutes regulating appeals in such other cases from Supreme Courts of Territories to the U. S. Supreme Court, and

4th. Such right of appeal is expressly preserved and declared at the foot of such Section 6.

Fourth Point. Another reason might be stated why Congress gave appeals from the Supreme Court of the Territories to the Circuit Court of Appeals only in the cases specified in Section 6 of such act, and that is that the right of appeal from Circuit Courts of the United States to the U. S. Supreme Court given by Section 691 of the United States Revised Statutes being taken away by Section 14 of the act, there is merely in such Circuit Court cases :

1st. The *nisi prius* trial in the U. S. Circuit Court.

2d. Appeal to the Circuit Court of Appeals.

3d. An appeal from there to the U. S. Supreme Court. But in the Territory there is :

1. The *nisi prius* trial in the Territorial District Court.
2. The appeal to the Territorial Supreme Court, and
3. The appeal to the U. S. Supreme Court.

If an appeal were given to the Circuit Court of Appeals in Territorial cases, there would be four trials in a case coming from a Territory, while there would be only three in a case arising in the United States Courts in a State. It is reasonable to suppose that this was in view by Congress.

Fifth Point. The case of *McLish vs. Roff, 141 U. S., 666*, is not in point. It was a decision rendered under Section 13 of the Code of the Circuit Court of Appeals in which the decisions of the U. S. Court in the Indian Territory are especially provided for, and in nowise affects the provisions made for the other Territorial Courts as laid down in Section 15 and at the foot of Section 6.

The case of *Law Ow Bew vs. United States, 144 U. S., 56*, is also not in point, for the reason that that was a

case coming from the Circuit Court of a State, except that the quotation from *McLish vs. Roff* on appellee's brief on this motion would seem to be in accord with the foregoing view expressed in this brief as to appeals to the Supreme Court of the United States being preserved as a matter of right in all cases not made final by the first part of Section 6 of the act.

In the case 144 U. S., *supra*, it was expressly provided that the words "unless otherwise provided by law," in Section 6, in the clause which provides that the Circuit Courts shall exercise appellate jurisdiction in all cases other than those provided for in the preceding section of the act, unless otherwise provided by law, were inserted in order to guard against implied appeals, and are not to be construed as referring to prior laws only.

Sixth Point. As to the issue and return of the citation, that is not a jurisdictional question with the Supreme Court of the United States, but is a question of procedure only, and a general appearance supplies any defect of a citation on appeal.

United States vs. Armejo, 18 L. Ed., U. S. Supreme Court R., 247.

If an appeal is allowed and docketed in the Supreme Court, the jurisdiction of the appeal becomes perfect, and what remains to get in the parties is a matter of procedure only, and not jurisdictional, so far as the appeal is concerned.

Dodge vs. Knowles, 114 U. S., 433.

In *Railroad Company vs. Blair, 100 U. S., 662*, it was said: "Still, an appeal otherwise regular would "not probably be dismissed absolutely for want of "a citation, if it appeared by clear and unmistakable "evidence outside of the record that the allowance was

" made in open court at the proper term, and that the " appellee had actual notice of what had been done."

And the Court goes on to say in the 114 U. S.:

" The citation is intended, as notice to the appellee, that an appeal has been taken and will be duly prosecuted. No special form is prescribed. The purpose is notice so that the appellee may appear and be heard. * * * It is not jurisdictional. Its only purpose is notice."

In this cause the appellees had due notice and proof of service of the citation as duly appears in the record, and the appellees have appeared in this Court, and this criticism is of no avail.

It is allowable to issue a new citation where there is any defect in the issue or service of a citation returned to the Court with the transcript,

National Bank vs. Bank of Commerce, 99 U. S., 608.

and, if the Court deems it necessary, leave is now respectfully asked for an appeal allowing the appellants to amend the writ and citation by making the proper recital as to the return in lieu of the " second Monday in October," and causing a new citation to be issued and served on the appellees, if so deemed necessary, as was done in the 99 U. S. *(supra)*.

Seventh Point. For the reasons above stated the motion to dismiss should be denied.

Respectfully submitted,

WM. ALLEN BUTLER,

JOHN NOTMAN,

Of Counsel for Appellants.